

United States  
Circuit Court of Appeals

For the Ninth Circuit.

W. G. SIMPSON and S. D. SIMPSON,  
Plaintiffs in Error,

vs.

THE UNITED STATES OF AMERICA,  
Defendant in Error.

TRANSCRIPT OF RECORD

*Upon Writ of Error From the United States Dis-  
trict Court of the District of Idaho,  
Southern Division.*

**Filed**

MAY 11 1915



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**Circuit Court of Appeals**  
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Southern Division.*



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*In the District Court of the United States Within  
and for the District of Idaho, Southern Division.*

February Term, 1915.

THE UNITED STATES OF AMERICA,

vs.

S. D. SIMPSON and W. G. SIMPSON,

Defendants.

### INDICTMENT.

*CHARGE: Issuing Certificate of Deposit with  
Intent to Injure and Defraud. Vio. Sec. 5209  
R. S. U. S.*

The Grand Jurors of the United States of America, being first duly impaneled and sworn, within and for the District of Idaho, Southern Division, in the name and by the authority of the United States of America, upon their oaths, do find and present:

That heretofore, to-wit: on or about the 27th day of March, 1913, at Caldwell, in the County of Canyon and State and District of Idaho, and within the jurisdiction of this court, one S. D. Simpson, being then and there the Cashier of a certain national banking association then and there known and designated as "The American National Bank of Caldwell", which said association had been theretofore created and organized under and by virtue of an act of Congress entitled "An Act to Provide a National Currency secured by a Pledge of United States Bonds, and to Provide for the Circulation and Redemption thereof", approved June 3, 1864, and which said association was then and there acting

and carrying on a banking business at the City of Caldwell in the said district under the said act of Congress and acts amendatory thereto, and the business of the said association being then and there directed by a board of directors duly qualified thereunto, and which said association was then and there authorized to issue and put forth, in accordance with law, certificates of deposit drawn upon said association, did wilfully, unlawfully and feloniously, and with the intent to injure and defraud said association, and without the authority of the said directors of the said association, issue and put forth a certain certificate of deposit of said association, which said certificate of deposit therein and thereby certified that there had been deposited by one W. G. Simpson in and with said association, on the date last aforesaid, the sum of Two Thousand Five Hundred Dollars (\$2,500.00), which said certificate of deposit was then and there in words and figures following, to-wit:

“The Monticello Banking Co.,  
Monticello, Ky., 9715.

THE AMERICAN NATIONAL BANK, 1549,  
OF CALDWELL.

No. 1991—Int.	\$2,500.00
	62.50
	<hr/>
	\$2,562.60



Caldwell, Idaho, March 27, 1913.

CERTIFICATE OF DEPOSIT.

*Not Subject to Check.*

W. G. Simpson has deposited in this Bank Twenty-five Hundred & No-100 Dollars payable to the order of himself in current funds on the return of this Certificate properly endorsed six months after date, with interest at 5 per cent per annum. No interest after maturity.

S. D. SIMPSON, Cashier.

Due Sept. 27th."

In the center of the face of said Certificate of Deposit appears a circle with a capital C in pad or purple ink, and which said Certificate of Deposit after having been so issued and put forth as afore-said has been on the back endorsed as follows:

"W. G. Simpson. All prior endorsements guaranteed. Pay to the order of any bank or banker. Sept. 22, 1913. The Monticello Banking Co., 73-258 Monticello, Ky. W. L. Baker, Cashier. 9-22—9715.

92-50. Previous endorsements guaranteed. Pay any bank or banker or order. Sep. 27, 1913, First National Bank, Caldwell, Idaho. W. P. Lyon, Cashier. 92-50.

Pay to the order of First Nat. Bank. All prior endorsements guaranteed. First National Bank of Chicago. 2-1 Sep. 24, 1913. 2—H. A. Howland, Cashier.

All prior endorsements guaranteed pay to the order of any bank or banker, Sep. 23, 1913. Please report by our No. 3204, National Bank of Kentucky, Louisville, Ky. H. D. Ormsby, Cashier."

And the Grand Jurors aforesaid, on their oaths aforesaid, do further find and present, that the said W. G. Simpson, to whom said Certificate of Deposit was then and there issued and put forth as aforesaid, did not then and there, to-wit, at the time the said Certificate of Deposit was so issued and put forth by the said S. D. Simpson, cashier as aforesaid, have on deposit with said National Banking Association, an amount of money then and there equal to the amount then and there specified in said Certificate of Deposit, to-wit, the amount of Two Thousand Five Hundred Dollars (\$2,500.00), or any amount or sum of money whatsoever, as he, the said S. D. Simpson, then and there well knew, and so the said S. D. Simpson did at the time aforesaid and in the manner and form aforesaid, wilfully, unlawfully, and feloniously, and with intent to injure and defraud said association, issue and put forth the aforesaid Certificate of Deposit, without any authority therefor from the said directors, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

And the Grand Jurors aforesaid, on their oaths aforesaid, do further find and present: That the said W. G. Simpson, late of the City of Caldwell, in

the district aforesaid, then and there being the identical person to whom said Certificate of Deposit was, in the manner and form aforesaid, issued and put forth, heretofore, to-wit, on the day and year last aforesaid at said Caldwell, in Canyon County, State and District of Idaho, and within the jurisdiction of this court, did then and there wilfully, unlawfully and feloniously, and with intent to injure and defraud the said association, aid, abet, incite, counsel and procure the said S. D. Simpson, cashier of said association as aforesaid, wilfully, unlawfully and feloniously, and with intent to injure and defraud the said association as aforesaid, and without authority of the said board of directors as aforesaid, to issue and put forth the said Certificate of Deposit in manner and form aforesaid to do and commit, he, the said W. G. Simpson, then and there well knowing that he did not have the said sum of Two Thousand Five Hundred Dollars (\$2,500.00), or any sum at all on deposit with the said association;

Contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

J. R. SMEAD,

Assistant United States Attorney, District of Idaho.

Guy E. Matthews, Foreman of the Grand Jury of the United States.

*Witnesses Examined before the Grand Jury in the Above Case:*

Fred G. Huffman; M. J. Devers, Director; F. W.

Ford, Bookkeeper; F. A. Walters, Director; Fred Brown.

Indorsed: Filed February 13, 1915. A. L. Richardson, Clerk. By Pearl E. Zanger, Deputy Clerk.

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PLEA OF ONCE IN JEOPARDY.

*In the District Court of the United States Within  
and for the District of Idaho, Southern Division.*

UNITED STATES,

Plaintiff,

vs.

W. G. SIMPSON and S. D. SIMPSON,

Defendants.

No. 563.

*To the Honorable Judge of said Court:*

*Come Now* the defendants in the above styled and numbered cause and file this their written plea of jeopardy and acquittal, and under oath state the facts to be:

That at a former term of this Honorable Court, held in the said District and Division of the said State, which said court then and there had jurisdiction, these defendants were required to and did enter a plea of not guilty to an indictment similarly styled and bearing the identical number that this indictment bears, and thereupon in said court came a jury composed of ..... and eleven others and after having been duly tested and empaneled, oral testimony was taken and submitted

under the rulings of the court in said cause to the said jury from the 16th day of September, A. D. 1914, to the 18th day of September, A. D. 1914. That on the said last date, the Government having introduced all of its testimony, rested, and thereupon the defendants and each of them, rested, and thereupon the Government closed its case, and then the defendants, and each of them closed their cases, and thereupon came the United States by its representatives and argued the said cause to the court and to the jury and thereupon came the defendants by their representatives and argued the said cause to the court and to the jury, and thereupon the court, of its own motion and over the protest of these defendants, and each of them, to which action of the court the defendants and each of them excepted and still except discharged the said jury without the permission or consent or agreement of these defendants, or either of them.

*Wherefore*, these defendants and each of them, show that they have been in jeopardy and legally acquitted by reason of the facts hereinbefore detailed of all of which facts these defendants now offer proof and testimony. That such indictment upon which the foregoing happenings occurred is attached hereto and made a part hereof and shows as aforesaid the identical number carried by the indictment now called for hearing; and the defendants here and now offer testimony to show that it was upon said indictment that an issue was formed between them and the United States and the testi-



mony was taken as aforesaid, in open court and before a jury regularly empaneled for the number of days aforesaid, and that thereafter the said jury, over these defendants' protest was discharged as hereinbefore stated and shown.

*Wherefore,* DEFENDANTS PRAY THAT  
THEY MAY GO HENCE WITHOUT DAY.

J. H. HAWLEY,

W. A. STONE,

Attorneys for defendant, W. G. Simpson.

C. H. LINGENFELTER,

W. H. ATWELL,

Attorneys for defendant, S. D. Simpson.

W. G. Simpson, Defendant,

S. D. Simpson, Defendant.

Subscribed and sworn to before me this 23rd day of February, A. D. 1915, by W. G. Simpson and S. D. Simpson.

CHAS. W. MACK,

Notary Public.

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*In the District Court of the United States Within  
and for the District of Idaho, Southern Division.*

February Term, 1914.

THE UNITED STATES OF AMERICA,

vs.

S. D. SIMPSON and W. G. SIMPSON,

Defendants.

INDICTMENT.

*CHARGE: Issuing Certificate of Deposit without authority, Vio. Sec. 5209, R. S. U. S.*

The Grand Jurors of the United States of America, being first duly empaneled and sworn, within and for the District of Idaho, in the name and by the authority of the United States of America, upon their oaths, do find and present:

That heretofore, to-wit, on or about the 27th day of March, 1913, at Caldwell in the County of Canyon and State of Idaho, and within the jurisdiction of this court, one S. D. Simpson being then and there the Cashier of a certain national banking association, then and there known and designated as "The American National Bank of Caldwell", which said association had been theretofore created and organized under and by virtue of an act of Congress entitled "An Act to Provide a National Currency secured by a Pledge of United States Bonds, and to Provide for the Circulation and Redemption thereof", approved June 3, 1864, and which said association was then and there acting and carrying on a banking business at the City of Caldwell in the said district under the said act of congress and acts amendatory thereto, and which said association was then and there authorized to lawfully issue and put forth certificates of deposit drawn upon said association, did wilfully, unlawfully and feloniously, and with the intent to injure and defraud said association, issue and put forth a certain certificate of deposit drawn upon said association in the sum of

\$2,500.00 therein and thereby certifying that there had been deposited by one W. G. Simpson in and with said association, the said sum of \$2,500.00, which said certificate of deposit was then and there in words and figures following, to-wit:

“The Monticello Banking Co.,  
Monticello, Ky., 9715

THE AMERICAN NATIONAL BANK 1549  
OF CALDWELL.

No. 1991—Int.	\$2,500.00
	62.50
	<hr/>
	\$2,562.50

Caldwell, Idaho, March 27, 1913.

# CERTIFICATE OF DEPOSIT.

*Not Subject to Check.*

W. G. Simpson has deposited in this bank Twenty-five Hundred & No-100 Dollars payable to the order of himself in current funds on the return of this Certificate properly endorsed six months after date, with interest at 5 per cent per annum. No interest after maturity.

S. D. SIMPSON, Cashier.

Due Sept. 27th.”

In the center of the face of said certificate of deposit appears a circle with a capital C in pad or purple ink, and which said certificate of Deposit after having been so issued and put forth as afore-said has been on the back endorsed as follows:

“W. G. Simpson. All prior endorsements guaranteed. Pay to the order of any bank or banker



Sep. 22, 1913. The Monticello Banking Co., 73-258 Monticello, Ky. W. L. Baker, Cashier. 9-22—9715.

92-50. Previous endorsements guaranteed. Pay any bank or banker or order. Sep. 27, 1913. First National Bank, Caldwell, Idaho. W. P. Lyon, Cashier.

Pay to the order of First Nat. Bank, all prior endorsements guaranteed. First National Bank of Chicago 2-1 Sep. 24, 1913. 2—H. A. Howland, Cashier.

All prior endorsements guaranteed pay to the order of any bank or banker, Sep. 23, 1913. Please report by our No. 3204, National Bank of Kentucky, Louisville, Ky. H. D. Ormsby, Cashier."

And the Grand Jurors aforesaid, on their oaths aforesaid, do further find and present, that the said W. G. Simpson, to whom said Certificate of Deposit was then and there issued and put forth as aforesaid, did not then and there, to-wit, at the time the said certificate of deposit was so issued and put forth by the said S. D. Simpson, cashier as aforesaid, have on deposit with said National Banking Association, an amount of money then and there equal to the amount then and there specified in said certificate of deposit, to-wit, the amount of \$2,500.00, nor any amount or sum of money whatsoever as he, the said S. D. Simpson, then and there well knew, and so the said S. D. Simpson did, at the time aforesaid and in the manner and form aforesaid, wilfully, unlawfully and

feloniously, and with the intent to injure and defraud said association, issue and put forth the aforesaid certificate of deposit, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

And the Grand Jurors aforesaid, on their oaths aforesaid, do further find and present: That the said W. G. Simpson, late of the City of Caldwell, in the district aforesaid, then and there being the identical person to whom said certificate of deposit was in the manner and form aforesaid, issued and put forth heretofore, to-wit, on the day and year last aforesaid at said Caldwell and within the jurisdiction of this court, did then and there wilfully, unlawfully and feloniously, and with the intent aforesaid to injure and defraud the said association, aid, abet, incite, counsel and procure the said S. D. Simpson, cashier of said association so as aforesaid, to wilfully, unlawfully and feloniously, and with the intent aforesaid, issued and put forth the said certificate of deposit in manner and form aforesaid to do and commit, he, the said W. G. Simpson, then and there well knowing that he did not have the said sum of \$2,500.00 or any sum at all on deposit with the said association;

Contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

HARRY KEYSER,

United States Attorney for the District of Idaho.

C. J. Sinsel, Foreman of the Grand Jury of the United States.

*Witnesses Examined before the Grand Jury in the Above Case:*

E. M. Henden, Fred Brown, Roy Brollier, M. J. Devers.

Indorsed: Filed February 13, 1915. A. L. Richardson, Clerk. By Pearl E. Zanger, Deputy Clerk.

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REPLICATION TO PLEA OF JEOPARDY.

*In the District Court of the United States Within and for the District of Idaho, Southern Division.*

THE UNITED STATES OF AMERICA,

vs.

W. G. SIMPSON and S. D. SIMPSON,

Defendants.

No. 563.

*Replication to Plea of Jeopardy.*

Comes now J. L. McClear, attorney for the United States in and for the Southern Division, District of Idaho, and appears for the said United States in its behalf and says that the United States ought not to be precluded from prosecuting the said indictment against the said W. G. and S. D. Simpson by reason of anything pleaded in the plea of former jeopardy of said defendants in this cause for the reason that said plea is not a true statement of the proceedings on the 18th day of September, 1914, as is shown by a copy of the journal record of the court of said day

in this cause, which is attached hereto and marked Exhibit "A" and made a part hereof. That further that the question of the insufficiency of the indictment in the former hearing of this case was raised by one of the attorneys for the defendant, as shown by such journal record and further shows that the indictment was quashed and the jury discharged and that the defendants or neither of them were ever tried, convicted or acquitted on a sufficient indictment as shown by the records of this court, and further that the plea as filed by defendants does not raise an issue of fact in this cause.

J. L. McCLEAR,  
United States Attorney.

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EXHIBIT "A". Sept. 18, 1914

No. 563.

THE UNITED STATES OF AMERICA,

vs.

S. D. SIMPSON and W. G. SIMPSON,

*Issuing Certificate of Deposit Without Authority.*

The trial of this cause adjourned on yesterday for further hearing and was this day resumed. Jury called and found to be present and the respective counsel being in court. C. H. Lingenfelter, Esq., addressed the court and jury on behalf of the defendant, S. G. Simpson, followed by Wm. A. Stone, Esq., on behalf of the defendant, W. G. Simpson. Here the defendant, by Wm. A. Atwell, Esq., moved

the court for a peremptory instruction to the jury to return a verdict of not guilty, which motion was opposed by counsel for plaintiff and after argument the court ordered that said motion be denied, to which ruling the defendants by their counsel excepted in due form of law, which exception was allowed. The court thereupon ordered that the indictment in this cause be quashed and discharged the jury from the further consideration of said cause, and upon motion of the United States District Attorney it was ordered that cause be re-submitted to another Grand Jury and ordered that the defendants be each admitted to bail in the sum of \$2500.00.

Indorsed: Filed February 24, 1915. A. L. Richardson, Clerk. By Pearl E. Zanger, Deputy Clerk.

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*In the District Court of the United States in and for  
the District of Idaho, Southern Division.*

UNITED STATES,

Plaintiff,

vs.

W. G. SIMPSON and S. D. SIMPSON,

Defendants.

No. 563.

*Demurrer.*

*To the Honorable Frank S. Dietrich, Judge thereof:*

I.

*Come Now* the defendants and show to the court that the indictment in the above styled and num-



bered case states no offense known to the laws of the United States of America. Wherefore, they pray judgment.

## II.

Further demurring and moving to quash the above styled and numbered indictment, the defendants and each of them plead that the same is duplicitous in that it charges four separate and distinct offenses; (1) it charges these defendants with having issued and put forth a certificate of deposit with intent to injure the National Banking Association therein mentioned, and (2) it attempts to charge these defendants with having issued the certificate of deposit herein mentioned with intent to defraud the National Banking Association therein mentioned; (3) it attempts to charge these defendants with having issued the certificate of deposit therein mentioned, and (4) it further attempts to charge these defendants with having put forth the certificate of deposit therein mentioned. Thus it attempts to charge the doing of an act with intent to injure; the doing of an act with intent to defraud; the issuing of a certificate of deposit and the putting forth of a certificate of deposit, each of which acts is, if properly pleaded, a distinct offense under Section 5209.

## III.

The said indictment is further defective and subject to demurrer and motion to quash, both of which suggestions and motions are here now made, because the same attempts to plead and does plead a

state of facts which do not constitute a violation of that portion of Section 5209 which makes it criminal to issue a certificate of deposit under the conditions therein inhibited; such facts being the pleading of what appears to be testimony which if true does not constitute a violation of Section 5209. In other words, the statute does not denounce as criminal the issuance of a certificate of deposit without the funds first being deposited in said bank, but merely contents itself with denouncing as criminal the issuance of a certificate of deposit without the authority of the board of directors, and such allegations are therefore impertinent and do not allege facts constituting an offense.

Further for other demurrers and objections to said bill of indictment and reasons for quashing the same and holding the same for naught, these defendants show that the said bill is uncertain, vague and indefinite and does not sufficiently apprise them of the charge sought to be made against them, in that in one portion thereof it is alleged and averred that a certificate of deposit was issued and put forth wherein it was certified that there had been deposited by one W. G. Simpson in and with said Association the sum of \$2500.00, and in another portion thereof it is alleged and averred that at the time said certificate of deposit was so issued and put forth the said W. G. Simpson did not have on deposit with the said National Banking Association the said sum of \$2500.00, or any amount or sum whatsoever, and there is no statement or allegation or averment that

the said W. G. Simpson had not in fact deposited \$2500.00 in said bank to the credit of said bank, or paid over to said bank the said sum of money. In other words the allegations made in the bill of indictment might be thoroughly consistent with the legal issuing of said certificate of deposit and the allegations and averments in said indictment in said regard are not inconsistent with the innocence of the defendants and each and both of them.

Said indictment is further vague, inconsistent and does not give these defendants sufficiently to understand the charge made against them, in that it is alleged in said bill of indictment that said National Banking Association and its board of directors were authorized to issue and put forth certificates of deposit drawn upon said Association, and then proceeds to set forth an alleged state of facts which would show the drawing of the certificate therein described by the said Association.

*Wherefore* defendants pray that they go hence without day.

J. H. HAWLEY,

W. A. STONE,

Attorneys for Defendant, W. G. Simpson.

C. H. LINGENFELTER,

W. H. ATWELL,

Attorneys for Defendant, S. D. Simpson.

Indorsed: Filed February 23, 1915. A. L. Richardson, Clerk. By Pearl E. Zanger, Deputy Clerk.



INSTRUCTION REQUESTED ON BEHALF OF  
DEFENDANT, W. G. SIMPSON. No. 1.

It appears from the testimony in this case that for a long time prior, and for several weeks subsequent, to the date on which the crime charged in the indictment is alleged to have been committed, to-wit: the 27th day of March, 1913, the defendant, W. G. Simpson, was President of the American National Bank of Caldwell, Idaho;

The indictment alleges that the defendant, W. G. Simpson, aided and abetted by one, S. D. Simpson, who, as cashier of the said American National Bank, is charged in the indictment as principal.

Under the provisions of Section 5209, Revised Statutes of the United States, one who is an officer of a National Bank can not be charged and tried as an aider or abetter, but such officer must be indicted and tried as a principal.

You are, therefore, instructed to find the defendant, W. G. Simpson not guilty.

Richardson vs. United States, 181, Fed.  
Rep. 1.

Coffin vs. United States, 162 (162) U. S.  
S. C. 664, Law Ed. Vol. 40, 1109.

*Contra:* U. S. vs. Kettenbach, 202 Fed.  
377.

DEFENDANTS' INSTRUCTION No. 14.

The jury are instructed that to warrant a conviction, each fact necessary to establish the guilt of the accused must be proven by competent evidence

beyond a reasonable doubt, and the facts and circumstances proven should not only be consistent with the guilt of the accused, but inconsistent with any other reasonable hypothesis or conclusion than that of guilt to produce in your minds a reasonable and moral certainty that the accused committed the offense.

DEFENDANTS' INSTRUCTION No. 15.

The court further instructs the jury that circumstances of suspicion, no matter how grave or strong, are not proof of guilt, and the accused must be found not guilty unless the fact of his guilt is proven beyond every reasonable doubt to the actual exclusion of every reasonable hypothesis of his innocence consistent with the facts proven.

DEFENDANTS' INSTRUCTION No. 16.

The jury are instructed that a defendant must be presumed to be innocent until his guilt is fully established by legal evidence. The presumption of innocence prevails throughout the trial and it is the duty of the jury, if possible, to reconcile the evidence with this presumption.

DEFENDANTS' INSTRUCTION No. 17.

The jury are instructed that each circumstance, essential to the conclusion of the defendant's guilt should be fully established in the same manner and to the same extent as if the whole issue rested upon it. You must be satisfied that each link in the chain of circumstances, essential to the conclusion sought to be established by the prosecution has been fully

proven beyond a reasonable doubt and to your entire satisfaction, otherwise you must acquit.

#### DEFENDANTS' INSTRUCTION No. 18.

The jury are instructed that in order to convict the defendants upon circumstantial evidence, it is necessary not only that all the circumstances concur to show that he committed the crime charged, but that they are inconsistent with any other reasonable conclusion. It is not sufficient that the circumstances proven coincide with, account for, and render probable the hypothesis sought to be established by the prosecution, but they must exclude, to a moral certainty, every other hypothesis but the single one of guilt, or the jury must find the defendant not guilty.

#### DEFENDANTS' INSTRUCTION No. 19.

I further instruct you, gentlemen of the jury, that the mere suspicion of guilt engendered by the evidence is not sufficient to warrant the conviction of the defendant upon a criminal charge. The guilt of the defendant so charged must be proven beyond reasonable doubt by the evidence in the case. The further fact that the defendants in this case rested upon the close of the case for the prosecution and did not introduce evidence in their own behalf, is not a circumstance to be considered by the jury as indicating guilt. It is the right of the defendants so to do and such course should not prejudice them or either of them in the minds of the jury or be a circumstance to be considered against them or either of them, if in the minds of the jury the proof offered

by the prosecution does not prove the guilt of the defendants upon the particular charge made in the indictment beyond all reasonable doubt.

Endorsed: Filed Feb. 26, 1915. A. L. Richardson, Clerk. By Pearl E. Zanger, Deputy.

---

DEFENDANTS' SPECIALLY REQUESTED  
CHARGE No. 12.

*In the United States District Court for the District  
of Idaho at Boise.*

UNITED STATES,

vs.

W. G. and S. D. SIMPSON.

*Defendants' Specially Requested Charge No. 12.*

The defendants request the court to charge the jury as follows:

You are instructed, gentlemen of the jury, that the defendants are on trial under an indictment for an alleged offense under what is known as Section 5209 of the Revised Statutes of the United States; and since the indictment does not charge the issuing of the certificate of deposit therein mentioned, without the authority of the Board of Directors of the American National Bank at Caldwell, you will find the defendants not guilty.

*In the United States District Court for the District  
of Idaho at Boise.*

UNITED STATES,

vs.

W. G. SIMPSON and S. D. SIMPSON,

*Defendants' Specially Requested Charge No. 2.*

You are instructed, gentlemen of the jury, that before you can convict the defendants upon the charge made against them in this indictment, that you must find from the evidence, beyond a reasonable doubt that the certificate of deposit mentioned in the indictment must have been issued or put in circulation by the defendants, or either of them, without the authority of the Board of Directors, and if you find that there is no testimony showing such want of authority you will find the defendants, both of them, not guilty.

---

*In the United States District Court for the District  
of Idaho at Boise.*

UNITED STATES,

vs.

W. G. SIMPSON and S. D. SIMPSON.

*Defendants' Specially Requested Charge No. 3.*

You are instructed, gentlemen of the jury, to find the defendants not guilty of the charge made against them in the indictment.

*In the United States District Court for the District  
of Idaho at Boise.*

UNITED STATES,

vs.

W. G. and S. D. SIMPSON.

*Defendants' Specially Requested Charge No. 4.*

You are instructed, gentlemen of the jury, that since the Government has offered no proof showing or tending to show the want of authority from the Board of Directors of the American National Bank of Caldwell for the issuing of the certificate of deposit set forth in the bill of indictment and introduced in evidence, you will find the defendants, and both of them not guilty.

---

*In the United States District Court for the District  
of Idaho at Boise.*

UNITED STATES,

vs.

W. G. and S. D. SIMPSON.

*Defendants' Specially Requested Charge No. 5.*

You are instructed, gentlemen of the jury, that the indictment in this case alleged no offense against the laws of the United States because same fails to allege that the certificate of deposit set forth in the bill of indictment was issued without the authority of the Board of Directors, or any of them, of the American National Bank at Caldwell, and you will therefore find defendants not guilty.



*In the United States District Court for the District  
of Idaho at Boise.*

UNITED STATES,

vs.

W. G. and S. D. SIMPSON.

*Defendants' Specially Requested Charge No. 6.*

You are instructed, gentlemen of the jury, that certificates of deposit may be lawfully issued by National Banks and particularly by the American National Bank of Caldwell, if the Board of Directors authorize such issuance, and if they do authorize such issuance, such act or issuance of such certificate of deposit would not be illegal nor amount to any offense against Section 5209 of the United States Revised Statutes; and therefore there being no testimony introduced before you showing or tending to show that the Board of Directors of the American National Bank of Caldwell did not authorize the issuance of the certificate of deposit set forth in the bill of indictment, if the same in fact were issued, that you shall and are hereby instructed to find the defendants, and both of them, not guilty.

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*In the United States District Court for the District  
of Idaho at Boise.*

UNITED STATES,

vs.

W. G. and S. D. SIMPSON.

*Defendants' Specially Requested Charge No. 7.*

You are hereby instructed, gentlemen of the jury, to find defendants not guilty, for the reason that the

Government has failed to introduce any proof that the certificate of deposit set forth in the bill of indictment, was issued, of the same were issued, without the consent of the Board of Directors of the American National Bank of Caldwell.

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*In the United States District Court for the District  
of Idaho at Boise.*

UNITED STATES,

vs.

W. G. and S. D. SIMPSON.

*Defendants' Specially Requested Charge No. 8.*

You are instructed, gentlemen of the jury, to find defendants not guilty of the charge made against him in the indictment for the reason that the said indictment fails to allege that the certificate of deposit therein mentioned was issued without the authority of the Board of Directors of the American National Bank of Caldwell.

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*In the United States District Court for the District  
of Idaho at Boise.*

UNITED STATES,

vs.

W. G. and S. D. SIMPSON.

*Defendants' Specially Requested Charge No. 9.*

You are instructed, gentlemen of the jury, that the testimony with reference to the change of the



numbers on the certificate of deposit was not unlawful and you cannot convict the defendant S. D. Simpson, nor either of the defendants for having changed the said certificate, if you find that the defendant S. D. Simpson, or either of the defendants did so change the same, because such change is not an offense under the law and they are not charged in the bill of indictment with any such transaction.

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*In the United States District Court for the District  
of Idaho at Boise.*

UNITED STATES,

vs.

W. G. and S. D. SIMPSON.

*Defendants' Specially Requested Charge No. 10.*

You are instructed, gentlemen of the jury, that you cannot convict the defendants, or either of them, because you should find, if you do find, that the certificate of deposit set forth in the bill of indictment and introduced in evidence was issued, if you do find that it was issued, without entering same in the books of the bank, because such a transaction, if it happened is not against the law and is not denounced by the statute; and before you can convict the defendants or either of them, you must find affirmatively from the testimony introduced in evidence, that there was not deposited in the American National Bank at Caldwell, the amount of money or finds or credits indicated on the face of the certifi-

cate and you would not be authorized to convict them in that event, if you should further fail to find that the Directors had not authorized the issuance of such certificate.

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*In the United States District Court for the District  
of Idaho at Boise.*

UNITED STATES,

vs.

W. G. and S. D. SIMPSON.

*Defendants' Specially Requested Charge No. 11.*

You are instructed, gentlemen of the jury, that you cannot convict the defendants, S. D. Simpson or W. G. Simpson, until and unless you are satisfied beyond a reasonable doubt, that the offense charged in the indictment has been proven against him, and if you have such doubt, either from the testimony or from the lack of it, it will be your duty to acquit the defendant.

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*In the United States District Court for the District  
of Idaho at Boise.*

UNITED STATES,

vs.

W. G. and S. D. SIMPSON.

*Defendants' Specially Requested Charge No. 12.*

You are instructed, gentlemen of the jury, that the defendants are presumed to be innocent of the

charge made against them, and this presumption stands as a sufficient safeguard until you are satisfied from the testimony that they are not guilty of the offense charged against them in the indictment beyond a reasonable doubt, and if you have such doubt, you should acquit them.

Endorsed: Filed April 26, 1915. A. L. Richardson, Clerk. By Pearl E. Zanger, Deputy.

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*In the United States District Court for the District  
of Idaho at Boise.*

UNITED STATES,

vs.

W. G. and S. D. SIMPSON.

*Defendants' Specially Requested Charge No. 13.*

You are instructed, gentlemen of the jury, that the defendants, and each of them are assumed under the law to be of good character, and this assumption stands as affirmative proof in their behalf and may be taken as testimony to remove any suspicions of wrong-doing that are not proven to be true to your minds beyond a reasonable doubt; and if this is not done, and if your minds are not satisfied beyond a reasonable doubt of the guilt of the defendant S. D. Simpson, giving him the benefit of the presumption of good character and the benefit of the presumption of innocence, it will be your duty to acquit him.

Endorsed: Filed February 26, 1915. A. L. Richardson, Clerk. By Pearl E. Zanger, Deputy.

## CASE NO. 563.

*Defendant S. D. Simpson's Special Requested Charge  
Charge No. 14.*

You are instructed, gentlemen of the jury, that the words "issue" and "put forth", as used in the indictment in this case, and as used in the statute, have a special legal meaning, which is, in substance, that the instrument declared upon in this prosecution must have been complete at the time it went into the hands of the holder. In other words, it must have been dated, signed, must have carried an amount, a payee, and a maturity. In other words, a blank certificate could not have been issued and put forth within the meaning of the indictment, and within the meaning of the statute.

(Refused).

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CASE NO. 563.

*Defendant S. D. Simpson's Special Requested Charge  
No. 15.*

You are directed, gentlemen of the jury, to find the defendants not guilty, for the reason that the indictment herein is duplicitous, in that it charges four different and distinct offenses, to-wit, it declares upon an act which is said to have been done with intent to injure the bank, and also declares upon that same act as having been done with intent to defraud, and it also declares that the instrument declared upon in the indictment was issued, and it also provides that the instrument declared on in the indict-

ment was put forth. Now you are told that issuing and putting forth are not synonymous terms in the law; neither are injure and defraud synonymous terms. They are used in the statute disjunctively, but declared upon in the indictment conjunctively, and because of such declaration the indictment is duplicitous, and you will find for the defendants.

(Refused).

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CASE NO. 563.

*In the District Court of the United States in and for  
the District of Idaho, Southern Division.*

THE UNITED STATES,

vs.

S. D. SIMPSON and W. G. SIMPSON.

*Defendant S. D. Simpson's Specially Requested  
Charge No. 1.*

You are instructed, gentlemen of the jury, that the pith of the charge in the indictment in this case is the issuing and putting forth of the certificate of deposit therein described without the consent of the board of directors of the Bank and with the intent to injure and defraud that Bank, and the allegation is made in the indictment that such issuing and putting forth was within the Idaho District and within the Southern Division of such District. This allegation is a matter of fact that must be proven by the Government to your satisfaction beyond a reasonable doubt, and you are therefore charged that if you should find, in accordance with the other instruc-

tions herein given you, that the certificate of deposit described in the indictment was not issued and put forth in the Southern Division of the District of Idaho, but was issued and put forth in the State of Mississippi, or anywhere else than the Southern Division of the District of Idaho, and, to-wit, in Canyon County, or if you have a reasonable doubt upon this question, you will find the defendants and both of them not guilty.

(Given in part).

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CASE NO. 563.

*In the District Court of the United States in and for  
the District of Idaho, Southern Division.*

THE UNITED STATES,

vs.

S. D. SIMPSON and W. G. SIMPSON.

*Defendant S. D. Simpson's Specially Requested  
Charge No. 2.*

The charge made against these defendants is that they issued in Canyon County, Southern Division of the District of Idaho, a certain certificate of deposit without the consent of the board of directors. It is in evidence before you that the cashier, S. D. Simpson, one of the defendants herein, was in the habit of issuing certificates of deposit without first consulting the directors of the institution and that the directors knew this. It is further in evidence that when the certificate was received in Caldwell for pay-



ment on September 27, 1913, the board of directors of the Bank met and ratified its issuance and ordered it paid, and you are therefore instructed that such ratification, as a matter of law, dated back to the time of its issuance and rendered valid its issuance and you are therefore directed to acquit both defendants.

(Refused).

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CASE NO. 563.

*In the District Court of the United States in and for  
the District of Idaho, Southern Division.*

THE UNITED STATES,

vs.

S. D. SIMPSON and W. G. SIMPSON.

*Defendant S. D. Simpson's Specially Requested  
Charge No. 3.*

You are charged as a matter of law, gentlemen, that the certificate in question was not issued or put forth, in the legal sense of those two terms, in Canyon County, Southern Division of the District of Idaho. If you find, as a matter of fact, that the certificate was not dated nor made payable to any one, nor for any amount, but was in fact blank, save and except that S. D. Simpson had signed the same when it left Canyon County, State of Idaho, it would be your duty, therefore, to find the defendants, and each of them, not guilty.

(Refused).

## CASE NO. 563.

*In the District Court of the United States in and for  
the District of Idaho, Southern Division.*

THE UNITED STATES,

vs.

S. D. SIMPSON and W. G. SIMPSON.

*Defendant S. D. Simpson's Specially Requested  
Charge No. 4.*

You are instructed, gentlemen of the jury, that if you find, as a matter of fact, that the certificate set forth in the indictment as actually filled out as to date and amount and maturity and payee, and had all of its blanks filled in the State of Mississippi, or if you have a reasonable doubt upon this question, then and in that event, it would be your duty to find the defendants and each of them not guilty, because in such event the certificate would not have been issued and put forth in the Southern Division of the District of Idaho, as charged in the bill of indictment.

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CASE NO. 563.

*In the District Court of the United States in and for  
the District of Idaho, Southern Division.*

THE UNITED STATES,

vs.

S. D. SIMPSON and W. G. SIMPSON.



*Defendant S. D. Simpson's Specially Requested  
Charge No. 5.*

You are instructed, gentlemen of the jury, that the only charge against these defendants, or either of them, is the issuing of the certificate of deposit set forth in the indictment without the consent of the board of directors and with intent to injure and defraud the bank and in coming to your conclusion as to whether or not the Government has established its allegations with respect to this question, beyond a reasonable doubt, you shall not consider the depositing of the \$2425.00 to the account of W. G. Simpson, nor the subsequent transactions with relation thereto, for the reason that the intent to injure and defraud as alleged in the indictment and demanded by the law to constitute the acts an offense, is the intent that existed in the minds of the defendants at the time of the issuing and not an intent or determination they formed thereafter and if you believe or have a reasonable doubt as to whether they had the intent to injure and defraud at the time the certificate was issued and put forth, then it would be your duty to acquit the defendants and both of them.

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CASE NO. 563.

*In the District Court of the United States in and for  
the District of Idaho, Southern Division.*

THE UNITED STATES,

vs.

S. D. SIMPSON and W. G. SIMPSON.

*Defendant S. D. Simpson's Specially Requested  
Charge No. 6.*

You will find the defendant, S. D. Simpson, not guilty.

(Refused).

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CASE NO. 563.

*In the District Court of the United States in and for  
the District of Idaho, Southern Division.*

THE UNITED STATES,

vs.

S. D. SIMPSON and W. G. SIMPSON.

*Defendant S. D. Simpson's Specially Requested  
Charge No. 7.*

You are instructed, gentlemen of the jury, that the intent to injure and defraud is an essential ingredient of the offense charged and before you can convict the defendant, S. D. Simpson, you must believe beyond a reasonable doubt, not only that the certificate in question was issued and put forth without the consent of the directors in Canyon County on the date alleged in the indictment, but also that at that time, the defendant, S. D. Simpson, intended thereby to injure and defraud the American National Bank, and if you do not so find beyond a reasonable doubt, it will be your duty to acquit the defendant, S. D. Simpson.

CASE NO. 563.

*In the District Court of the United States in and for  
the District of Idaho, Southern Division.*

THE UNITED STATES,

vs.

S. D. SIMPSON and W. G. SIMPSON.

*Defendant S. D. Simpson's Specially Requested  
Charge No. 8.*

You are instructed, gentlemen of the jury, that it is no ingredient or part of the offense charged against these defendants that they shall have followed, or failed to have followed, the instructions or commands of the National Bank Examiner, and you shall not permit the testimony that has been introduced before you with reference to such orders or commands to influence you in finding a verdict against the defendants, or either of them, unless you shall in addition thereto find independently that each of them had an intent to injure and defraud the American National Bank at the time of the issuing and putting forth if they did issue and put forth, the certificate in question within the jurisdiction of this Court, and without the consent of the board of directors of that Bank.

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CASE NO. 563.

*In the District Court of the United States in and for  
the District of Idaho, Southern Division.*

THE UNITED STATES,

vs.

S. D. SIMPSON and W. G. SIMPSON.

*Defendant S. D. Simpson's Specially Requested  
Charge No. 9.*

You are instructed, gentlemen of the jury, that the Government was permitted to prove the payment of the certificate in question when the same was presented at the American National Bank in September, 1913, and there was some testimony by one or two of the Government witnesses that that amount was lost to the Bank. In view of this testimony, the court permitted the defendant to prove and to testify that the fund out of which the Bank made the payment in September, 1913, was raised by the defendant and paid by the defendant and that as a matter of fact, it was not lost to the Bank, and you are therefore charged, that you may take all of this testimony, both of the Government and the defendant for the purpose of assisting you in securing such light as you may upon the original intention of the defendants to injure and defraud, as hereinbefore and as herein-after mentioned and charged.

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CASE NO. 563.

*In the District Court of the United States in and for  
the District of Idaho, Southern Division.*

THE UNITED STATES,

vs.

S. D. SIMPSON and W. G. SIMPSON.

*Defendant S. D. Simpson's Specially Requested  
Charge No. 10.*

You are charged, gentlemen of the jury, that the statute does not require and it is not an ingredient of the offense charged against these defendants, that the money should be deposited in a bank when a certificate of deposit is issued, nor does the statute require that money or its equivalent be deposited in a bank or with a bank before that bank shall issue a certificate of deposit, nor does the law require that one shall deposit money or its equivalent before a bank shall issue to him a certificate of deposit.

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CASE NO. 563.

*In the District Court of the United States in and for  
the District of Idaho, Southern Division.*

THE UNITED STATES,

vs.

S. D. SIMPSON and W. G. SIMPSON.

*Defendant S. D. Simpson's Specially Requested  
Charge No. 11.*

You are further instructed, gentlemen of the jury, that the statute under which this indictment is found and under which these defendants are being prosecuted, does not require or demand that the consent of the board of directors of a bank shall be secured concurrent with the issuance of a certificate of deposit.

(Refused).

## CASE NO. 563.

*In the District Court of the United States in and for  
the District of Idaho, Southern Division.*

THE UNITED STATES,

vs.

S. D. SIMPSON and W. G. SIMPSON.

*Defendant S. D. Simpson's Specially Requested  
Charge No. 12.*

You are charged, gentlemen of the jury, that the law under which these defendants are being prosecuted does not state when the consent of the board of directors shall be secured with reference to the issuance of a certificate of deposit, whether such consent shall be prior to its issuance or after its issuance, nor does it prescribe any particular time for such consent either before or after such issuance and, therefore, if you find that the board of directors, of the American National Bank, or have a reasonable doubt with reference thereto, accepted such certificate on September 27, 1913, acknowledged it as the debt of the Bank and ratified its original issuing and putting forth and ordered the same paid, with full knowledge of all the facts with relation thereto, then and in that event, such consent and ratification would date back to the time of the certificate's original issuance and constitute a consent to such original issuing.



*In the District Court of the United States in and for  
the District of Idaho, Southern Division.*

THE UNITED STATES,

Plaintiff,

vs.

S. D. SIMPSON and W. G. SIMPSON,

Defendants.

*Instructions asked to Be Given by Defendant, W. G.  
Simpson.*

Hawley & Hawley, and

W. A. Stone,

Attorneys for Defendant,

W. G. Simpson.

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*Defendants' Instruction No. 1.*

I further instruct you, gentlemen of the jury, that the mere issuance of the certificate of deposit in question is not sufficient to constitute the crime with which the defendants are charged. Before the defendants, or either of them, can be convicted the jury must be convinced by the evidence, beyond all reasonable doubt that in issuing said certificate, the defendants intended to injure or defraud the American National Bank.

(Refused).

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*Defendants' Instruction No. 2a.*

You are instructed that the evidence is insufficient to justify the conviction herein of the defendant W. G. Simpson, and I advise you therefore to acquit him.  
(Refused).

*Defendants' Instruction No. 2a.*

The jury is instructed that a certificate of deposit is not issued within the meaning of the statute under consideration until the same has been filled out and delivered to or for the party in whose benefit the same is drawn, and in this case, if you find that the certificate of deposit in question was delivered in blank by the defendant, S. D. Simpson to the defendant W. G. Simpson, at Caldwell, Idaho, and was by W. G. Simpson filled out in the State of Kentucky with the name of payee and the amount called for by the certificate, then and in such event, the crime, if such action was a crime, was committed not in the State or District of Idaho, but in another and different and in another judicial district of the United States then this court would not have jurisdiction of the offense charged, and you should, therefore, acquit the defendants and each of them.

(Refused).

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*Defendants' Instruction No. 3.*

I further instruct you, gentlemen of the jury, that if the certificate of deposit in question was issued at Caldwell on or about the time charged in the information, and that at the time of its issuance the defendants fully intended that said certificate of deposit should be disposed of for the benefit of the bank, and the proceeds of its sale should be placed in the funds of the Bank, and that the defendants

were acting in good faith in said matter at the time of such issuance, but that afterwards, the defendants, or either of them, misappropriated such proceeds to another and a different purpose and to the detriment of the Bank, or appropriated said proceeds to their or his own use and benefit, then and in such event, the defendants or either of them so acting was guilty of a crime under the laws of the United States, by reason of such taking or misapplication of said funds, but such crime is not included in the charge contained in this indictment and you cannot convict the defendants, or such defendant, under this indictment therefor, and your verdict should be not guilty on the present charge.

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*Defendants' Instruction No. 5.*

The court further instructs you, gentlemen of the jury, that if the jury believes from the evidence that at the time of issuing the certificate of deposit mentioned in the indictment, the defendants issued the same without any intent on their part to defraud or injure the Bank, but intended to use the said certificate as a means of obtaining money to meet the necessities of the Bank and turn over the proceeds thereof to the Bank, but afterwards the defendants, or either of them, changed their o r his mind and decided to appropriate the proceeds arising from the disposition of said certificate to their or his own use, in such event, the defendants cannot be convicted under this indictment.

*Defendants' Instruction No. 6.*

The jury are instructed that where an act done is made a crime if committed with a fraudulent intent on the part of the person charged with the commission of such crime, that the question of the intention of the accused becomes an important one for the consideration of the jury. Intent being but a mental state of the accused, direct proof of it is not required, nor can it ordinarily be shown by direct proof, but it is generally established by all the facts and circumstances attending the doing of the act complained of, as disclosed in the evidence, and in this case the intent with which the defendants, or either of them, issued the certificate of deposit in question must be determined by you from all of the evidence in the case. You must be satisfied from all of the evidence in the case that the intent to defraud the American National Bank existed in the mind of each defendant before you can convict such defendant.

(Given in substance).

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*Defendants' Instruction No. 7.*

I further instruct you, gentlemen of the jury, that if it is shown by the evidence that defendant, W. G. Simpson, after he discovered the disposition made of the check and the proceeds of the check for \$2425.00 sent by him to the American National Bank, made arrangements to take up said check and pay it off and made proper arrangements therefor, under all the circumstances surrounding the matter, as it

would appear to him as a reasonable man, such matter as to be considered by you in connection with the other circumstances of the case in considering the question as to whether or not in the original making and taking by him of said certificate of deposit he was actuated by any intent to defraud or injure the American National Bank.

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*Defendants' Instruction No. 8.*

I further instruct you, gentlemen of the jury, that while the defendants in this cause are jointly charged, that there is no charge made, either in the indictment or in the evidence that there was a conspiracy between the two defendants to injure or defraud the Bank by the issuance of the certificate of deposit in question without the authority of the board of directors of said Bank being first obtained. You are privileged to find both of the defendants innocent, or both of the defendants guilty of the offense charged, or you can find one of the defendants guilty and the other not guilty. You are not privileged in this case to consider an act or a statement done or made by one of the defendants as the act or statement of the other defendant, unless it is further shown by the evidence that said other defendant had knowledge of or connection with, or was a party to said act or statement or authorized it.

(Given in substance).

Endorsed: Filed Feb. 26, 1915. A. L. Richardson, Clerk. By Pearl E. Zanger, Deputy.

*In the District Court of the United States for the  
District of Idaho, Southern Division.*

THE UNITED STATES OF AMERICA,

Plaintiff,

vs.

S. D. SIMPSON and W. G. SIMPSON,

Defendants.

VERDICT.

We the jury in the above entitled cause find the defendant, S. D. Simpson, guilty as charged in the indictment and we find the defendant, W. G. Simpson, guilty as charged in the indictment, but earnestly recommend both to the leniency of the court.

J. J. BENNETT, Foreman.

Endorsed: Filed February 27, 1915. A. L. Richardson, Clerk. By Pearl E. Zanger Deputy.

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At a stated term of the District Court of the United States for the District of Idaho, held at Boise, Idaho, on Tuesday the 23rd day of February, 1915.

Present: Hon. Frank S. Dietrich, Judge.

NO. 563.

THE UNITED STATES

vs.

S. D. SIMPSON and W. G. SIMPSON.

*Issuing Certificate of Deposit With Intent to Injure  
and Defraud.*

On this day the defendants herein came into court in person and by their attorneys C. H. Lingenfelter



and William H. Atwell, Esqs., appearing as counsel on behalf of the defendant S. D. Simpson, and James H. Hawley and William A. Stone, Esqs., on behalf of the defendant W. G. Simpson, to be arraigned upon the true bill of indictment heretofore presented against them by the Grand Jury. In answer to the court each defendant stated that he was indicted under his true name; the formal reading of the indictment was waived and each defendant furnished with a true copy thereof by order of Court. The defendants here stated that they were ready to plead, and thereupon filed a demurrer, which after consideration by the court was overruled. Thereupon they were permitted to file and did file their plea of once in jeopardy and former acquittal, and being asked for their plea each defendant pleaded, separately for himself, that he is not guilty of the offense charged in the indictment.

It appearing to the court that there is not a sufficient number of trial jurors in attendance with the express assent of the defendants, S. D. Simpson and W. G. Simpson, it was ordered that a venire be issued to the Marshal to summon fifteen good and lawful men to appear in said cause at three o'clock P. M. to serve as trial jurors which venire was duly issued and returned by the Marshal with the names of the following persons served, to-wit: J. I. Mills, J. R. Rose, R. R. Mason, Dean Perkins, W. L. Basil, S. D. Vance, C. W. Balentine, W. W. Abrams, D. L. Selby, F. J. Gove, T. A. Sloan, Arthur W. Gibbs, J. R. Bennetts, Chas. E. Bullock and W. H. Thompson.

Thereupon said cause came regularly on to be heard and tried before the court and jury, counsel appearing for the defendants as above stated. J. L. McClear, U. S. District Attorney, and John R. Smead, Assistant U. S. District Attorney, appearing on behalf of the plaintiff, and said defendants each being in court in person. The Deputy Clerk under the directions of the court proceeded to draw from the jury box the names of twelve persons, one at a time, to serve as a jury in said cause.

William Loving a person drawn from the box and sworn on voir dire was excused for cause.

The following named persons drawn from the box and sworn were excused on peremptory challenge by counsel for plaintiff, to-wit: A. P. Carnahan, Thomas Loveland, O. L. Bumgardner, Burt Leisey and J. R. Bennetts.

The following named persons drawn from the box and sworn were excused on peremptory challenge by counsel for defendants, to-wit: K. L. Keyes, Conrad M. Sutton, John Frees, Edward Goodrich, Alexander Duncan, Charles L. Points, Guy Graham and W. W. Abrams; and the following are the names of the persons drawn from the box, sworn on voir dire, passed upon, accepted by counsel for the respective parties and sworn by the Deputy Clerk to well and truly try said cause and a true verdict render therein according to the law and evidence, to-wit: Joseph Caylor, B. M. Buncell, Marion Philpot, R. H. Knowlton, J. J. Bennett, H. W. Balentine, D. L. Sel-

by W. L. Basil, H. W. Stevenson, Edward Swanton, F. J. Gove and Arthur W. Gibbs.

Under the directions of the court the indictment was read to the jury by the Assistant U. S. District Attorney and the defendants' pleas stated, after which the court admonished said jury, and adjourned the further hearing of said cause until tomorrow the 24th inst. at ten o'clock A. M.

Wednesday, February 24, 1915.

NO. 563.

THE UNITED STATES

vs.

S. D. SIMPSON and W. G. SIMPSON.

*Issuing Certificate of Deposit With Intent to Injure  
and Defraud.*

The trial of this cause adjourned on yesterday for further hearing was this day resumed. Jury called and found to be present; the respective attorneys of record and the defendants in person each being in court. Here the plea of once in jeopardy and former acquittal came on for hearing, and after hearing the evidence and argument and upon consideration, the court instructed the jury to return a verdict in favor of the United States and against the defendants, which was done accordingly, and said verdict is in the words following, to-wit:

*"In the District Court of the United States of America, District of Idaho, Southern Division.*

UNITED STATES OF AMERICA,

Plaintiff,

vs.

W. G. SIMPSON and S. D. SIMPSON,

Defendants.

### VERDICT.

We the jury in the above entitled cause find in favor of the United States of America, and against the defendants upon the plea of once in jeopardy and former acquittal interposed by the defendants.

J. J. BENNETT, Foreman."

Which verdict was filed and read to the jury, who confirmed the same. Thereupon said defendants by their respective attorneys excepted in due form of law, which exception was by the Court allowed. Thereupon the trial proceeded upon the pleas of not guilty.

The following named persons were sworn, examined and cross-examined as witnesses on behalf of plaintiff, to-wit: Fred Brown, M. L. Walker, A. W. Porter, James H. Forbes and C. D. Gates, after which the court admonished the said jury and adjourned the further hearing of said cause until tomorrow the 25th inst. at ten o'clock A. M.

Thursday, February 25, 1915.

No. 563.

THE UNITED STATES,

vs.

S. D. SIMPSON and W. G. SIMPSON.

*Issuing Certificates of Deposit Without Authority.*

The trial of this cause adjourned on yesterday for further hearing was this day resumed. Jury called and found to be present; the respective attorneys of record and the defendants in person each being in court.

The following named persons were sworn, examined and cross-examined as witnesses on behalf of plaintiff, to-wit: W. L. Baker, Frank W. Ford, E. M. Hendon, Lou Ella Kaley, Fred Brown, recalled, Fred G. Hoffman and the plaintiff rests.

S. D. Simpson (defendant) was sworn, examined and cross-examined as a witness on behalf of defendants and during the cross-examination the court admonished the jury, and adjourned the further hearing of said cause until tomorrow the 26th inst. at ten o'clock A. M.

Friday, February 26, 1915.

No. 563.

THE UNITED STATES,

vs.

S. D. SIMPSON and W. G. SIMPSON.

*Issuing Certificates of Deposit Without Authority.*

The trial of this cause adjourned on yesterday for further hearing was this day resumed. Jury called and found to be present; the respective attorneys of record and the defendants in person being in court.

The following named persons were sworn, examined and cross-exahined as witnesses on behalf of



defendant, to-wit: W. G. Simpson (defendant) and S. D. Simpson (defendant) recalled and the defense rests. Fred Brown, M. J. Devers and M. L. Walker were examined in rebuttal and the evidence closed, and after argument by the respective counsel said jury was instructed by the Court and thereupon retired to their room to consider of their verdict in charge of an officer of the court, who was first duly sworn.

Now came the jury all called and found to be present; the respective attorneys of record and the defendants in person each being in court. Being asked if they had agreed upon a verdict, they through their foreman, stated that they had not and wished further instructions upon the case. And after being further instructed by the Court said jury again retired to their room to consider of their verdict in charge of an officer of the court, who was first duly sworn.

Saturday, February 27, 1915.

No. 563.

THE UNITED STATES,

vs.

S. D. SIMPSON and W. G. SIMPSON.

*Issuing Certificates of Deposit Without Authority.*

Now came the jury all called and found to be present; the respective attorneys of record and the defendants in person each being in court. Being asked if they had agreed upon a verdict, they



through their foreman stated that they had and presented the following verdict, to-wit:

*“In the District Court of the United States for the  
District of Idaho, Southern Division.*

THE UNITED STATES OF AMERICA,

Plaintiff,

vs.

S. D. SIMPSON and W. G. SIMPSON,

Defendants.

### VERDICT.

We, the jury in the above entitled cause, find the defendant, S. D. Simpson, guilty as charged in the indictment, and we find the defendant, W. G. Simpson, guilty as charged in the indictment, but earnestly recommend both to the leniency of the Court.

J. J. BENNETT, Foreman.”

Which verdict was filed and read to the jury, who confirmed the same. Thereupon the Court discharged said jury from the further consideration of said cause.

No. 563.

THE UNITED STATES,

vs.

S. D. SIMPSON and W. G. SIMPSON,

*Issuing Certificates of Deposit Without Authority.*

On this day this cause came on to be heard upon defendants' motion in arrest of judgment and motion for new trial, and after argument by the respective counsel, and after consideration, the Court

ordered that said motions be, and they are hereby overruled.

Saturday, March 6, 1915.

No. 563.

THE UNITED STATES,

vs.

S. D. SIMPSON and W. G. SIMPSON.

*Issuing Certificates of Deposit Without Authority.*

Now came the U. S. District Attorney with the defendants in person, and by their attorneys, thereupon the Court ordered that the said defendants do each be imprisoned and kept in the United States Penitentiary at McNeil Island, State of Washington, for the term of five (5) years.

*In the District Court of the United States for the Southern Division of the District of Idaho.*

February Term, A. D. 1915.

Present: Hon. Frank S. Dietrich, Judge.

No. 563.

THE UNITED STATES,

vs.

S. D. SIMPSON and W. G. SIMPSON.

*Convicted of Issuing Certificates of Deposit Without Authority.*

Now, On this 6th day of March, 1915, the United States District Attorney, with the defendants in person and by their counsel, W. A. Stone, James H. Hawley, C. H. Lingenfelter and W. A. Atwell came

into court; the defendants were duly informed by the Court of the nature of the indictment found against them for the crime of issuing certificates of deposit without authority, committed on the 27th day of March, A. D. 1913, of his arraignment and plea of "Not guilty as charged in said indictment," of their trial and the verdict of the jury on the 27th day of March, A. D. 1913, "Guilty as charged in the indictment." The defendants were then asked by the Court if they had any legal cause to show why judgment should not be pronounced against them, to which they replied that they had none, and no sufficient cause being shown or appearing to the Court.

Now, therefore, the said defendants each having been convicted of the crime of issuing certificates of deposit without authority, it is hereby considered and adjudged that the said defendants, S. D. Simpson and W. G. Simpson, <sup>each</sup> ~~and that they stand committed until said fine is paid.~~

~~And that he~~ be imprisoned and kept in the U. S. Penitentiary at McNiel Island, State of Washington, for the term of five (5) years and it is further ordered and adjudged that said defendants be and are hereby remanded to the custody of the United States Marshal for Idaho, to be by him delivered into said prison and to the proper officer or officers thereof.

## MOTION FOR NEW TRIAL.

*In the District Court of the United States in and for  
the District of Idaho, Southern Division.*

Case No. 563.

UNITED STATES,

vs.

S. D. SIMPSON and W. G. SIMPSON.

*To the Honorable F. S. Dietrich, Judge thereof:*

*Come Now*, the defendants and move the Court to set aside the verdict herein rendered on Saturday, February 27th, A. D. 1915, and grant them a new trial for the following reasons, to-wit:

Because the verdict is contrary to the evidence:

(a) In that the evidence showed beyond controversy that the certificate set forth in the bill of indictment did not become such a certificate until some time in April, 1913, at Meridian, Mississippi, where the same first came into existence and from which point the same was forwarded for a commercial transaction to the first holder thereof in Monticello, Kentucky, or put forth within the jurisdiction of this Court.

(b) The continuous practice of the defendant, S. D. Simpson, to issue certificates of deposit without the express consent of the Board of Directors, was sufficient to authorize the said defendant to assume that his course in sending forth the blank certificate in question to see if the same could in fact be issued and put forth elsewhere would be ratified by the Board of Directors and assented to by such Board.

(c) When the certificate was handed to the defendant, W. G. Simpson, in the Idaho District, by the defendant, S. D. Simpson, the same was a mere blank piece of paper without any payee, amount, date or maturity therein and there was no testimony that either of the defendants knew at that time what would be the amount thereof, nor the maturity, nor the date, nor who would be the payee, but the same was, in fact, turned over in its incomplete and blank condition for the purpose of seeing whether the same could be issued and put forth in another jurisdiction.

(d) The use of the \$2425.00 after the date of the turning over of the unfilled blank certificate in Idaho and after it was issued and put forth and completed in the State of Mississippi, could not constitute the statutory offense charged, nor tend to establish the same in the absence of the belief beyond a reasonable doubt that such intent to injure and defraud existed in Idaho when the certificate was handed out or in Mississippi when the certificate was issued and put forth, and other than the mistaken use of such fund after the offense was complete, if it was an offense, or after the innocent act had happened, if it was an innocent act. There was no injury or defrauding of the Bank from which such intent to injure or defraud might legitimately and lawfully have been presumed by the jury.

## II.

Because the same is contrary to the law in that:

(a) The law does not permit one to be convicted



in the jurisdiction of Idaho for an offense committed in the State of Mississippi, or in the State of Kentucky.

(b) The law does not permit an intent to injure and to defraud to be presumed from any act other than an act that in fact does injure or does defraud and the instruction of the Court delivered at 1 A. M. on the morning of Saturday, February 27th, to the jury in response to their request for further light upon the question of intent, that if they found as an affirmative fact, that the defendants used the \$2425 as their own, knowing that it was the property of the Bank, that from such circumstance they would be authorized in presuming that they intended to injure and defraud at the time of the issuing and putting forth of the certificate of deposit.

(c) The Court erred in his resume of his original charge on intent, which resume was given to the jury at 1 A. M. Saturday, February 27th, in response to their request for additional light upon the question of intent, when and wherein he failed to instruct the jury as to the defendants' rights under the question of intent; that is to say, if the jury were in doubt as to the intent and were halting in their judgment, that these questions of intent must be found against the defendants beyond a reasonable doubt, and if there was such doubt, as was then and there being evidenced, in the minds of the jurors, they should resolve it in favor of the defendants and acquit them.



*Wherefore*, defendants pray as heretofore stated.

W. A. STONE, and

JAMES H. HAWLEY,

Attorneys for Defendant, W. G. Simpson.

C. H. LINGENFELTER,

and W. H. ATWELL,

Attorneys for Defendant, S. D. Simpson.

Endorsed: Filed March 1, 1915. A. L. Richardson, Clerk. By Pearl E. Zanger, Deputy Clerk.

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### BILL OF EXCEPTIONS.

*In the District Court of the United States in and for  
the District of Idaho, Southern Division.*

No. 563.

UNITED STATES,

vs.

S. D. SIMPSON and W. G. SIMPSON.

Be it remembered that upon trial of the above numbered and entitled cause, in the District Court of the United States for the Southern Division of the District of Idaho, at Boise, from the 23rd to the 27th days of February, inclusive, A. D. 1915, the following proceedings were had, to-wit:

Upon the call of the cause, the defendants presented their motion to quash and demurrers, the grounds of which are more particularly set forth in such motion and demurrers and the Court, after having heard the same, overruled the same in all respects, whereupon the defendants, and each of

them duly and seasonably, in open court, excepted and still except.

And be it further remembered that thereafter the defendants called to the attention of the Court and presented to the Court their written plea of jeopardy and former acquittal, which said plea in words and figures, had theretofore been filed with the Clerk of the Court and which said plea is here and now referred to.

And be it further remembered in this connection that the jury for the trial of this cause had been duly selected and empaneled and was sitting in the jury box, and thereupon, upon replication being filed by the Government the Court ordered that the defendants proceed with such plea, though there had been no demurrer filed thereto by the Government, and thereupon the defendants introduced the following testimony, and the following happened, to-wit:

The Court: Have you any proof to offer in support of your plea, gentlemen?

Mr. Atwell: Yes, sir.

The Court: Proceed.

Mr. Atwell: We first offer, may it please your Honor, indictment No. 563, United States against W. G. and S. D. Simpson.

The Court: The indictment in this court, you mean?

Mr. Atwell: Yes, sir. Copy is attached to the plea, and the original is now offered in testimony,

which is the identical indictment now sought to be tried in this court, save and except that the sentence relating to the issuing of certificate without the authority of the Board of Directors is added. It is alleged in the plea that that indictment came on to be heard before a court of competent jurisdiction, of which Your Honor takes judicial notice. We offer the journal entries showing the calling of the case for trial on the 16th day of September, 1914, of such numbered and styled indictment; the pleading of the defendants to the bill of indictment; the empaneling of a jury composed of D. M. McGlenn and eleven others; the calling of witnesses by the government, and the swearing of such witnesses, and the testifying of such witnesses in that cause. We offer the journal entries of this honorable court for September 16, 17, 18, and particularly such journal entries as show that the Government rested its case on September 17th, and that thereupon the defendants rested their case, that thereupon the Government closed its case, that thereupon the United States Attorney and his Assistant and counsel for the defendants argued the cause which had theretofore been tried and submitted in this honorable court on those dates. And also such journal entries as particularly show that on the last of such dates, to-wit: September 18th, the defendants asked the Court to instruct the jury to bring in a verdict of not guilty, but that the Court, of his own motion, discharging the jury, over the protest and exception of the defendants. The Court of course, takes judicial knowledge of the indictment that we are now called upon to answer. The read-

ing of these various documents, may it please Your Honor, is waived, I assume.

Mr. McClear: I was going to say, Your Honor, that we take issue with them on that proof, and wish to stand on the journal record of the last day, but dispute the statement as to the fact that the case was entirely submitted to the court. The other attorneys, Mr. Lingenfelter and Mr. Hawley, had made an argument, and Mr. Atwell, in the course of his argument—

The Court: They are just introducing the record relating to these matters.

Mr. Hawley: The entire record.

Mr. McClear: We are standing on the entire record.

The Court: Then it will be understood that the entire record in that case is before the Court.

\* \* \* \*

The Court: Argument is unnecessary. Gentlemen of the jury, in order that you may understand what has been presented here, and not be confused or misled, I will say to you that, as appears from the record to which reference has now been made, these defendants were brought into court at a former term hereof, upon a charge substantially in the main like that set forth in the present indictment. After the evidence had been offered, my attention was called to the fact, by a motion for a directed verdict on the part of the defendants, that that indictment was defective, and after argument I felt impelled to take

that view, that is, that that indictment did not state facts sufficient to charge an offense under the statute, and I thereupon discharged the jury from the further consideration of that cause, and directed that the matter be re-submitted to the Grand Jury. Following that direction, the District Attorney did re-present the matter to the Grand Jury, resulting in this indictment which you are now called upon to try. I advise you that as a matter of law the evidence is insufficient to support this defense which is now being interposed, that is, that these defendants have been once in jeopardy. There is a principle of law that a man shall not be tried twice for the same offense, but in view of what took place in the former case that is not deemed to have been a trial. Hence they have never been tried for this offense, and therefore, you will return a verdict, so far as this particular issue is concerned, that is, this plea of once in jeopardy, in favor of the Government and against the defendants, and thereupon we will proceed to try the question as to whether or not they are guilty or not as charged in the indictment. Of course, you will try that issue, that is, whether or not these defendants, or either of them are guilty of the offense now before you, you will try that issue without being prejudiced in any way by reason of the interposition of this plea of former jeopardy. You will give them a fair trial upon the question whether or not they are guilty of the offense charged in the indictment which was read to you last night, and which is not on trial.



Gentlemen, I will prepare this form of verdict and let the jury bring it in later, if you are willing that that course be pursued, in order to avoid delay.

Mr. Hawley: That will be satisfactory. We note an exception, of course.

The Court: Yes, you may take your exception now, and when the verdict is returned, you may also have your exception.

Mr. Atwell: We would like also, Your Honor, to reserve an exception to that portion of the Court's charge which called the attention of the jury to the fact that the matter had been re-submitted to a Grand Jury upon instructions of the court.

The Court: The jury, of course, will not be prejudiced by that fact. You will understand that it is necessary in this court, in order to bring anyone to trial, to first submit the matter to a grand jury, and have an indictment. Now the indictment here is no evidence at all of the guilt of either one of the defendants; it raises no presumption; it is not a circumstance to be considered by you touching their guilt; it is simply a formal charge by which the Government advises the defendants of the charge upon which they are to be tried, so that they can prepare their defense, so that the fact that the matter was re-submitted to a grand jury shall not be taken by you as prejudicial to them in any way.

The Court: I have a form of verdict prepared now, gentlemen. Before the introduction of evidence, gentlemen of the jury, referring again to the



matter of the plea which I explained to you a moment ago, and upon which I stated it would be your duty to find in favor of the Government and against the defendants, I have a form of verdict prepared in accordance with that view. You may elect a foreman in your seat, and he will sign this verdict. You may right there just elect a foreman and have him sign this verdict.

(J. J. Bennett was thereupon elected, and signed the verdict, which read as follows: "We, the jury in the above entitled cause find in favor of the United States of America, and against the defendants upon the plea of once in jeopardy and former acquittal interposed by the defendants.")

The Court: This verdict may be filed. The record of course will show that it is returned under the direction of this court.

Mr. Lingenfelter: And over the objection of the defendants.

The Court: Yes. You have your exception.

And be it further remembered that after the introduction of the said testimony, the court of his own motion instructed the jury to find against the defendants' said plea and presented to the said jury a form of verdict which they were to and did sign, such verdict being as follows: "We, the jury, find against the defendants' plea of former jeopardy and acquittal. (Signed) . . . . ., Foreman." To which action of the court, the defendants then and there, in open court, duly and seasonably excepted and still except.

And be it further remembered that at the conclusion of the testimony upon the plea of not guilty the court charged the jury in the following language and form, to-wit:

The Court: Gentlemen of the jury, the charge in this case upon which the defendants are being tried involves a violation of what is commonly known as the National Banking Laws of the United States. Those laws provide for the organization of what are called Banking Associations, and for the operation of these associations under the law and under the supervision of the Comptroller of the Treasury Department. The Comptroller supervises this class of banks all over the United States, and in order that he may know the facts, know how the bank is being administered, how its affairs are being conducted, from time to time, he calls for a report, a written report, from the bank officials themselves, and in addition to that the Comptroller has in the field constantly a large number of examiners, whose duty it is to go here and there, and from time to time, under the direction of the Comptroller, to examine the books and records and assets and paper of the bank, and report their findings to the Comptroller, all with the view of keeping the Government officials advised touching the condition of the bank's affairs, and its solvency or insolvency, its compliance with, or its violation of, the provisions of the banking laws and rules of the Department. While one of these examiners has no authority to make rules, he has the right to demand that the law

and such rules as are adopted and promulgated by the Department within the law be complied with. He has a right to go into a bank and ask for information, and he has a right to receive full and truthful answers. I say this much upon this point because of a suggestion which has been made in regard to the rights and duties of the examiner who examined the bank in this case.

The defendants here are not charged with making false reports to the Comptroller or making untruthful answers to the examiner, or concealing any fact from the examiner. If, however, you find that they did conceal any fact, material to this present inquiry, from the examiner, you may consider that as a circumstance bearing upon the general question as to whether or not they are guilty of the offense charged here, and which I will explain to you more in detail later on.

The defendants in this case, as in all criminal prosecutions, whether in the state courts or in the federal courts in this country, come into court and stand before the jury presumed to be innocent of the charge upon which they are being tried; that is, there is a presumption that they are not guilty, and therefore the burden is cast, not upon them to show their innocence, but upon the Government to establish their guilt. This burden rests upon the Government in this case. It was its duty to show the defendant's guilt, and to do this, not merely by a preponderance of the evidence, but by evidence which convinces your judgment beyond a reasonable

doubt. I think you all answered that you are familiar with this doctrine in our criminal jurisprudence that no one shall be found guilty of a criminal offense unless the jury is convinced beyond a reasonable doubt of such guilt. and that means that you must be convinced beyond a reasonable doubt of the truthfulness of each material charge or element of the charge set forth in the indictment. By reasonable doubt is meant what the term itself upon its face implies, a reasonable doubt, not a mere fanciful doubt, but a doubt which is raised by the evidence upon some material point, or which results because of the insufficiency of the evidence upon some material point which the government must establish. Generally speaking, I may say to you that if, after you have made a candid comparison of all the evidence, and fairly considered it, you can truthfully say to yourselves that you have an abiding conviction of the defendants' guilt, such a conviction as you would be willing to act upon in the most important affairs of your own lives, then you have no reasonable doubt, and you should convict. If, upon the other hand, after such fair and candid analysis and consideration of the evidence, you cannot truthfully say that you have an abiding conviction, then you have a reasonable doubt, and you should acquit.

Each defendant here stands in his own right and on his own responsibility. That means that you cannot convict one of the defendants because of the wrong-doing, if you find any wrong-doing, on the part of the other. While they are jointly charged,

and are being jointly tried, each one, as I have suggested, is responsible for his own acts alone, and only that which he himself has done or said, or that in which he has participated, or that which he has authorized or caused to be done. No one is responsible for the acts or conduct of another unless he has in some way made himself responsible by acquiescing in or participating in or authorizing such act or thing. Hence in your consideration of the evidence, what one of the defendants did alone or what he said or wrote, these facts, are to be considered against such defendant alone, unless the other participated in what was said or done or written, or had knowledge of and acquiesced therein. You will see that it is entirely possible, depending upon what you believe the evidence shows, for you to find both of the defendants guilty as charged, or both of them not guilty, or one of them guilty and the other not guilty.

The statute upon which the indictment is based is in substance as follows: "Every president, director, cashier, teller, clerk, or agent of any national bank, who, without authority of the directors of the bank, issues or puts forth any certificate of deposit, with intent to injure or defraud that bank, or other corporation or person," is guilty of an offense, and is punishable. And furthermore, "Every person who, with like intent, aids or abets such cashier or other officer of the bank in so doing," is also guilty of an offense.



The defendant, S. D. Simpson, here is charged with having violated the first part of the statute, as I have read it to you, that is, that, as cashier, it is charged, he, without authority of the directors, issued or put forth a certificate of deposit, which is set forth in the indictment, with intent to injure and defraud the bank. And W. G. Simpson is charged with having aided and abetted him in so doing, with intent to injure and defraud the bank.

Speaking first now of S. D. Simpson, the defendant cashier: The elements of the offense charged against him are, first, that the bank at Caldwell of which he was cashier was a national banking association. Second, that he, S. D. Simpson, was at the time the cashier thereof. Third, that S. D. Simpson issued or put forth the certificate in question, and that he did so within the state of Idaho. Fourth, that the issuance of the certificate was without authority from the board of directors. Fifth, that it was issued with intent to injure or defraud the bank or its depositors of stockholders. It is necessary for you to find in the affirmative upon all of those five issues in order to find him guilty. And as to W. G. Simpson, in addition to that, it is necessary to find that he aided or abetted S. D. Simpson in so acting, and with intent on the part of him, W. G. Simpson, also to injure or defraud the bank.

Now a brief explanation of these elements, and speaking first with regard to the ingredients or elements of the offense as charged against the cashier, S. D. Simpson: You will doubtless have little diffi-



culty in understanding the proposition as to the American National Bank at Caldwell being a national banking association, and that S. D. Simpson was the cashier thereof. Coming now to the third proposition, namely, the meaning of the phrase or terms "issuing" or "putting forth" a certificate. As to this I have to say: If you find—and you will give careful attention to this—if you find that the defendant, S. D. Simpson, as cashier of the bank, and within the state of Idaho, signed the certificate in question in the customary way of signing such certificates, and put it into the hands of his brother, W. G. Simpson, either filled out in its present form, or with the date, amount, and payee in blank, as the defendants contend, with the authority to W. G. Simpson to fill in the blanks left for such purposes, and if thereupon, pursuant to such authority, the defendant, W. G. Simpson, took such certificate and filled in such blanks, and negotiated it by selling it or hypothecating it as collateral security, then you should find that said certificate was issued and put forth by the cashier, S. D. Simpson, one of the defendants at the time and place he signed the same and delivered it into the possession of his co-defendant. That is to say, gentlemen, it is quite unimportant whether this certificate was issued in blank or not, if in blank, and if S. D. Simpson, delivered it to his brother with authority to fill in the blanks, and to negotiate it, in contemplation of law that is the same as if it had been delivered to W. G. Simpson fully filled in, with authority to negotiate it.

As to the next element of the crime, and that is, that the certificate was issued without the authority of the directors, I explain the meaning of the statute to you in this way: The statute provides that to constitute an offense the certificate must be issued without authority of the directors. of the bank. There is, as I understand, no contention here that the Board of Directors gave express consent, that is, by order or resolution or by-law, express consent to the issuance of this certificate, but it is argued upon behalf of the defendants that their assent, that is, the assent of the Board of Directors, is to be inferred or implied from the fact that the cashier had been accustomed to issue certificates of deposit, and had issued them in large numbers, with the knowledge of the Board of Directors, and without objection upon their part. I say such is the argument or contention of the defendants. Generally I may say to you that in the absence of a by-law or of prohibitive action on the part of the Board of Directors, a cashier, by virtue of his official position, has authority to issue a certificate of deposit for moneys actually deposited in the bank. You will understand that in law a certificate of deposit is nothing more than a certificate to the effect that the holder thereof, or the payee therein named, has deposited in the bank the amount of money called for by the instrument, which amount of money, upon demand, or at a time stated in the certificate, the bank agrees to repay to the depositor or his assigns. It would be an ordinary incident of the banking business, therefore, for a cashier to issue

to a depositor who makes an actual deposit a certificate evidencing that fact. But no such general or implied authority from the board of directors exists in the cashier to issue a certificate of deposit falsely stating that the person to whom it is issued has deposited or has on deposit the amount therein stated. In other words, there is no general authority in a cashier to issue a certificate of deposit except in cases where the bank has received the money or its equivalent, and the fact that the board of directors may know it to be the practice of the cashier to issue certificates of deposit covering moneys actually received, and acquiesce therein, does not imply an assent upon their part to the issuance of a certificate when no money or other thing of value is received. And so in this case, the fact that the board of directors may have known of and acquiesced in the practice of issuing certificates where deposits were actually made, would constitute no warrant to the defendant cashier to issue the certificate in question without receiving for the bank and to its credit an equivalent in value.

Passing now to the next ingredient or element of the offense, and that is the intent to injure or defraud. Much of the evidence, both that offered by the Government and that offered by the defendants, bears upon this question of the intent. The offense defined by the statute is not complete unless there was at the time an intent to injure or defraud the bank or some other person. Proof of intent is rarely direct; direct proof of one's intent is, as a rule, im-

possible, because it is impossible to see into a man's mind and thus observe its operations. Intent as a rule is to be inferred from all of the facts and circumstances surrounding the transaction, the conduct, the acts, the words, of the person charged, and the circumstances surrounding them. Generally speaking, concealment and secrecy on the one hand is regarded as evidence of a certain intent, while openness of conduct is regarded as a circumstance tending to show a different intent.

While upon the witness stand the defendants were both called upon to testify touching their intent; that is, they were permitted to testify, and did testify, that they had no wrong intent. You are not to be bound by that necessarily. You may consider their statements in that respect together with all of the other facts and circumstances in evidence, and from all of the evidence, including their statements, determine what their intent actually was. As a rule, as was said to you in the course of the argument, a man is presumed to intend the natural consequences of that which he does. It is always subject to explanation, but in the absence of some explanation the presumption arises that a rational man intends the natural and probable consequences of that which he does. The term intent as here used does not imply malevolence, that is, malice, or ill will, toward the bank or anyone else; no hostility or bad feeling is involved. Intent to injure or defraud the bank is simply a willingness on the part of the defendants, the persons charged, to do an act which is violative of a right of

the bank and its depositors or stockholders. The mere fact that the wrongdoer may have expected ultimately to make reparation for a wrong which he wilfully does is not material and does not deprive the fact of the wrongful intent. For illustration, one who, as an employe of a bank, wrongfully appropriates its moneys coming into his possession, and embezzles the same, may in good faith intend ultimately to return the money, but such intention is of no avail. If he wilfully takes the money which doesn't belong to him he commits the crime of embezzlement, even though he may expect ultimately to reimburse the bank. Nor would any return of the money after the same has once been embezzled relieve the embezzler from the charge of embezzlement. So in considering the offense here involved: if you find that the defendants intended the issuance of one of the bank's certificates of deposit, and the use of it, either by sale or hypothecation, for the purpose of raising funds for their own private uses, and not for the bank, then you may conclude that they intended to injure and defraud the bank, even though it may have been their expectation and purpose to take care of the certificate and pay it when it became due, out of their own funds. In this connection reference may be made to the testimony tending to show that some time in the fall, possibly in September, I think that is right, is it not, gentlemen, September, when this certificate of deposit came to Caldwell?

Mr. McClear: September 27th.



The Court: September, when the certificate of deposit was sent to another bank at Caldwell for collection, and was presented for payment, some arrangement was made by which the defendants, or one of them, took care of it and protected the bank against loss. Such is the testimony on behalf of one or both of the defendants. And you will bear in mind that the charge here is not that the American National Bank was injured or defrauded, but that the certificate was issued with the intention to injure or defraud. And the defendants are not to be relieved or acquitted merely because they took care that the bank did not ultimately suffer loss. The question is not whether the bank was actually defrauded or not. The question is whether the certificate was issued with that intention. Evidence of this fact of payment would not have been received but for one consideration, and that is the contention of the defendants that the money which was realized by using the certificate as collateral in Kentucky got into the private accounts of the defendants as the result of a misunderstanding between them, and that the mistake was not discovered until W. G. Simpson came to Idaho about the middle of August. If, to illustrate my meaning, the defendants had immediately repaired the wrong, before others had knowledge of the existence of the certificate, you might very properly conclude that the restoration to the bank of the value of the certificate at that time tended to corroborate their intention of innocent mistake.

Whether you will give such significance to the restoration at the later date, when the certificate had



come to Caldwell and its existence was known, or must have become known, and under all the circumstances of the case, I leave it to you to say. Except for such light, if any, as you may conclude it, that is, the payment, throws upon this question, that is, the question whether the certificate was intended to be used for the personal benefit of the defendants, or whether such benefit was the result of inadvertence and misunderstanding, the restoration or payment is without significance.

I have further to advise you that if the certificate was issued by the defendant, S. D. Simpson, at or about the time mentioned in the information, and by said defendant delivered to the defendant, W. G. Simpson, in good faith, and without any intent on his part to defraud the bank in question, and that the defendant, W. G. Simpson disposed of said certificate of deposit with the intent of applying the proceeds of the disposition of said certificate to the use of the said bank, and sent the proceeds thereof in good faith to his co-defendant, S. D. Simpson, with the expectation and instruction that the said defendant, S. D. Simpson would deposit said proceeds in said bank for the use and benefit of the bank, you could not find the defendant W. G. Simpson guilty. Nor, in such case, if S. D. Simpson innocently believed that the money he received was the personal funds of his brother, should he be found guilty. Nor, if the certificate was issued in good faith, for the purpose of getting funds for the bank and was hypothecated as collateral for that purpose, and if

the funds so realized were in good faith sent to the bank for its use and benefit, would the defendants or either of them be guilty of the offense here charged, if thereafter, that is, after the funds were sent to the bank, in good faith, for its use and benefit, and received by it, the defendants then misapplied them by appropriating them to their own personal use. It is essential to guilt here that a wrongful intent must have existed at and prior to the time the certificate was hypothecated in Kentucky.

Now bearing in mind the explanation I have made to you of the various terms of the statute, I again repeat that you must find upon these questions: First, was the American National Bank at Caldwell a national banking association? Second, was S. D. Simpson the cashier thereof at the time the certificate of deposit was issued? Third, as such cashier, did he issue or put forth this certificate, and did he issue it in Idaho? Fourth, was the issuance without the authority of the board of directors of the bank? Fifth, was it with the intent to injure or defraud the bank or some other person? So much for S. D. Simpson.

As to W. G. Simpson, as I have already stated to you, he is charged with aiding and abetting in this alleged wrongful conduct on the part of his brother, S. D. Simpson. So as to him you must in addition find: First, that he aided or abetted S. D. Simpson, and, Second, that he did so with like intent, that is, with intent to injure or defraud the bank or its depositors or stockholders.

Gentlemen of the jury, you are the sole judges of the issues of fact in this case, and it is also your duty to take from the court, in good faith, and apply to the facts, the principles of law as I have explained them to you, even though you may have some pre-conceived or other idea as to what the law is or should be. I am leaving to you entirely the questions of fact, and it is for you to say upon which side the truth lies. You being the sole judges of the issues of fact, you are likewise the sole judges of the credibility of the witnesses, and the weight to be given to their testimony or any part of it. If I have inadvertently or indirectly seemed to you to express or imply any opinion or view as to what the facts are you are at liberty to disregard such views upon my part, for I am leaving to you entirely this responsibility, expecting, however, that you will apply the law to the facts as I have given it to you. I can help you very little in the performance of your duty touching the credibility of the witnesses. The best I can say to you, I think, is that you should bring to bear those rules which consciously or unconsciously you have learned in practical every-day experience and life. You have seen the witnesses testify, and you have thus the advantage of noting their demeanor upon the witness stand, and in the light of all of the evidence you should determine whether a witness has testified truthfully or falsely, and, if falsely, you may reject the testimony so far as it is false, and furthermore, if you find any witness has wilfully testified falsely, has wilfully misstated the

truth, perjured himself, you may reject all of his testimony, unless in some respects it is corroborated by order proof which is credible to you.

The defendants have chosen to testify upon their own behalf. This they had a right to do. Or they might have remained silent. Having chosen to testify, they occupy the same position as any other witnesses in the case, and they are to be judged in the light of the same general principles which are applicable to the testimony of all witnesses. You can't reject their testimony merely because they are the defendants in the case. You should weigh it carefully and candidly and fairly. You have a right to take into consideration, and it is your duty to take into consideration, the great interest they had in the result of the prosecution, because the interest of any witness in any prosecution is always a matter for consideration in determining the credibility of his testimony and the weight to be given to it. So you are to take into consideration here the interest of these witnesses, their deep interest, as you are to take into consideration any interest which you may find that any witness has in the result of the prosecution. Of course, if you find that the defendants have testified truthfully, then you will give the same force and effect to their truthful testimony that you will give to the testimony of any other witnesses.

It is necessary, gentlemen, that all of you concur in finding a verdict. As I have already explained to you, your verdict may be against both of the defendants or in favor of both of them, or against one

and in favor of the other. A form of verdict has been prepared which I think you will have no difficulty in using. It is as follows: "We the jury in the above entitled cause find the defendant, S. D. Simpson" and there a blank is left for the entry of the word "guilty" or the words "not guilty" as the case may be, to express your finding; and then it proceeds: "as charged in the indictment. And we find the defendant, W. G. Simpson,"—and there a blank is left for the insertion of the word "guilty" or the words "not guilty." When you have agreed upon a verdict, if you do so agree, your foreman will sign it, and you will come into court.

You will understand, gentlemen, that from this time on you are not to speak to anyone or permit anyone to speak to you concerning this case, not even the bailiff, himself, except to ask you if you have agreed upon a verdict.

(Bailiff sworn.)

Gentlemen, you may retire into the hallway with the bailiff for a few minutes. I will send word for you either to return or go to your jury room.

(Jury retired.)

Mr. Atwell: The defendant, S. D. Simpson, merely reserves an exception to the failure to give such of his requested instructions as were not given. Some of them I think were given in part.

The Court: Yes.

Mr. Atwell: And I reserve an exception to the charge upon issuing, may it please the court, the



definition of issuing, and to the question of venue, and to the use of the disjunctive in injure or defraud, it being charged in the indictment that is was injuring and defrauding.

Mr. Hawley: On behalf of the defendant, W. G. Simpson, we repeat and adopt the exceptions made by counsel for the other defendant, and in addition we take our exceptions to the charges tendered in behalf of the defendant, W. G. Simpson, and which have not been given by the court, and also our exceptions to the charges tendered in behalf of the defendant, S. D. Simpson, the same having been adopted as pertaining to the case against W. G. Simpson, at the time the same were presented.

The Court: Yes, that was understood. You may have your exceptions.

And be it further remembered that at the conclusion of the said charge and before the jury retired and in open court, the defendants and each of them, excepted to that portion of said charge which states as follows, to-wit:

“Coming now to the third proposition, namely, the meaning of the phrase or terms ‘issuing’ or ‘putting forth’ a certificate. As to this, I have to say: If you find—and you will give careful attention to this—if you find that the defendant, S. D. Simpson, as cashier of the bank and within the State of Idaho, signed the certificate in question in the customary way of signing such certificates and put it into the hands of his brother, W. G. Simpson, either filled out in its present form, or with the date, amount



and payee in blank, as the defendants contend, with the authority to W. G. Simpson to fill in the blanks left for such purposes, and if thereupon, pursuant to such authority, the defendant, W. G. Simpson took such certificate and filled in such blanks and negotiated it by selling it or hypothecating it as collateral security, then you should find that said certificate was issued and put forth by the cashier, S. D. Simpson, one of the defendants, at the time and place he signed the same and delivered it into the possession of his co-defendant. That is to say, gentlemen, it is quite unimportant whether this certificate was issued in blank or not. If in blank and if S. D. Simpson delivered it to his brother with authority to fill in the blanks and to negotiate it, in contemplation of law that is the same as if it had been delivered to W. G. Simpson fully filled out, with authority to negotiate it."

To which action of the court, as aforesaid, in so instructing the jury as aforesaid, the defendants then and there, duly and seasonably, in open court, before the jury retired, excepted and still except.

And be it further remembered that at the conclusion of the testimony and in his general charge to the jury, the court instructed the jury as follows, to-wit:

"In other words, there is no general authority in a cashier to issue a certificate of deposit, except in cases where the bank has received the money or its equivalent and the fact that the board of directors may know it to be the practice of the cashier to issue

certificates of deposit covering monies actually received, and acquiesced therein, does not imply assent upon their part to the issuance of a certificate when no money or other thing of value is received, and so in this case the fact that the board of directors may have known of and acquiesced in the practice of issuing certificates where deposits were actually made, would constitute no warrant to the defendant cashier to issue the certificate in question without receiving for the bank and to its credit an equivalent in value."

To which instruction, the defendants then and there, in open court, and before the jury retired, duly and seasonably excepted and still excepts.

And be it further remembered that upon the conclusion of the testimony, the court further instructed the jury, and in the following words and sentences, to-wit:

"And you will bear in mind that the charge here is not that the American National Bank was injured or defrauded, but that the certificate was issued with the intention to injure or defraud."

To which charge of the court and such portion thereof, the defendants and each of them, duly and seasonably, in open court and before the jury retired, excepted and still except.

And be it further remembered that at the conclusion of the testimony, the court charged the jury in the following words and sentences, to-wit.

"If, to illustrate my meaning, the defendants had immediately repaired the wrong before others had

knowledge of the existence of the certificate, you might properly conclude that the restoration to the bank of the value of the certificate at that time tended to corroborate their contention of innocent mistake."

To which action of the court and charge and language, the defendants and each of them, then and there, duly and seasonably in open court excepted and still except.

And be it further remembered that at the conclusion of the testimony the court charged the jury in the following sentences and expressions, to-wit:

"Fifth: Was it with the intention to injure or defraud the Bank or some other person? So much for S. D. Simpson. \* \* \* As to W. G. Simpson \* \* \* that he aided or abetted S. D. Simpson and that he did so with like intent, that is, with intent to injure or defraud the bank \* \* \*."

To which action of the court in so charging the jury, the defendants and each of them, duly and seasonably, in open court and before the jury retired, then and there excepted and still except.

And be it further remembered that at the conclusion of the testimony and before the court had delivered his general charge to the jury, the defendants, and each of them, requested in writing that the jury be instructed as shown in charge No. 1.

Be it further remembered that the court failed and refused to give the same or the substance thereof to which action of the court, in so failing and refusing, the defendants, then and there, and each

of them, in open court, duly and seasonably before the jury retired, excepted and still except.

And be it further remembered, that at the conclusion of the testimony and before the court had delivered his charge to the jury, and defendants and each of them requested in writing that the jury be charged as shown in requested charge No. 2, but that the court failed and refused to give the said charge in whole, or in part, or in substance, to which action of the court in so failing and refusing, the defendants and each of them, then and there, duly and seasonably, in open court, before the jury retired, excepted and still except.

And be it further remembered that at the conclusion of the testimony and before the court had charged the jury, the defendants and each of them, requested in writing that the jury be charged as shown in requested charge No. 3, but that the court refused and failed to give the said charge in whole, or in part, or in substance, to which action of the court in so failing and refusing, the defendants and each of them, then and there, duly and seasonably, in open court, before the jury retired, excepted and still except.

And be it further remembered that at the conclusion of the testimony and before the court had delivered his general charge to the jury, the defendants and each of them requested in writing that the jury be charged as shown in requested charge No. 4, but that the court refused to so charge the jury in whole, or in part, or in substance, to which action

of the court the defendants and each of them, then and there, duly and seasonably, in open court, before the jury retired, excepted and still except.

And be it further remembered that at the conclusion of the testimony, and before the court had given his general charge to the jury, the defendants and each of them requested in writing that the jury be charged as shown in requested charge No. 15, but that the court refused to so charge the jury, in whole, or in part, or in substance, and thereupon, in open court and duly and seasonably, before the jury retired, and defendants and each of them excepted and still except to such failure of the court.

And be it further remembered that at the conclusion of the testimony and before the court had given his general charge to the jury, the defendants requested in writing that the jury be charged as shown in requested charge No. 14, but that the court failed and refused to give the said charge in whole, or in part, or in substance, to the jury, to which failure and refusal, the defendants and each of them then and there, duly and seasonably, in open court, excepted and still except.

And be it further remembered that at the conclusion of the testimony and before the court had given his general charge to the jury, the defendants requested in writing that the jury be charged as shown in requested charge No. 6, but that the court failed and refused to give the said charge, to which action of the court, the defendants then and there, in open court, duly and seasonably, and before the jury retired, excepted and still except.



And be it further remembered that at the conclusion of the testimony and before the court had delivered his general charge to the jury, the defendants requested in writing that the jury be charged as shown in requested charge No. 10, but that the court refused and failed to so instruct the jury in whole, or in part, or in substance, and thereupon, the defendants and each of them, duly and seasonably, and in open court, and before the jury retired, excepted and still except.

And be it further remembered that at the conclusion of the testimony and before the court had given his general charge to the jury, the defendants requested in writing that the jury be instructed as shown in requested charge No. 11, but the court refused and failed to give the same in whole, or in part, or in substance, whereupon the defendants and each of them, duly and seasonably, in open court, and before the jury had retired, excepted and still except.

And be it further remembered that at the conclusion of the testimony and before the court had delivered his general charge to the jury, the defendants requested in writing that the jury be charged as shown in requested charge No. 12, but the court refused and failed to give the said instruction in whole, or in part, or in substance, and thereupon the defendants and each of them duly and seasonably, in open court and before the jury retired, excepted and still except.

And be it further remembered that at the conclusion of the testimony and before the jury be



charged as shown in defendants instruction No. 2-A, which instruction the court refused to give in whole or in part, or in substance, to which action of the court, the defendant, W. G. Simpson, then and there, in open court, duly and seasonably and before the jury retired, excepted and still excepts.

And be it further remembered that at the conclusion of the testimony, and before the court had given his general charge to the jury, the defendants requested in writing that the jury be charged as shown in requested instruction No. 4-A, but the court refused to give the same in whole, or in part, or in substance, and thereupon the defendants and each of them, before the jury retired, duly and seasonably, and in open court, excepted and still except.

And be it further remembered that the court finished his instructions to the jury at 9:45 P. M. Friday, February 26th, and thereupon the jury retired in the charge of a bailiff to their room in the Federal Building at Boise, where they were held until 1 A. M. Saturday, February 27th, when they requested that the court send them his charge and thereupon the court had the jury brought into the court room and his charge having been oral and taken down at the time it was given by the court stenographer, who had not yet transcribed the same and who was not at that hour available, the court asked the jury upon what point they desired to hear the charge, and the foreman thereupon arose and said, "We are not satisfied on the question of intent," and thereupon the court, so far as he could remember, resumed his

original charge on the question of intent, save and except he did not restate such restatements were not suggested by anyone to the jury that if they had a reasonable doubt with reference to the intent that they should acquit the defendants and thereupon the jury were retaken to their room and without sleep or succor or accommodations for either, spent the night therein and at 7 o'clock on Saturday morning, February 27th, were taken to breakfast and immediately returned to the jury room, and shortly after 10 o'clock A. M., Saturday, February 27th, they returned into open court a verdict of guilty as to both defendants, but attached to it was this recommendation, to-wit: "We earnestly urge leniency for the defendants." That thereupon and thereafter the defendants and each of them, filed their motion for a new trial, alleging that the verdict was the result of mental and physical exhaustion and was a compromise verdict and was reached, practically, through coercion, which motion the court overruled, to which action the defendants then and there, duly and seasonably excepted and still except.

Be it further remembered that upon the trial of the foregoing cause, there was no direct testimony with reference to the place of issuing or putting forth of the certificate in question save and except that the certificate in question was one of a number of blank certificates that had theretofore been printed for the American National Bank of Caldwell about 1500 of which had theretofore been issued. The defendants testified that about March 20, 1913,

the defendants having heard that three-fourths of the deposit of the City of Caldwell would probably be withdrawn from the American National Bank so that it could be given equally to the other three banks in the town, the two defendants concluded among themselves that the President of the American National Bank, who was defendant, W. G. Simpson, and who was acquainted in Mississippi and Kentucky, with men who were supposed to have have money, and who was going to that section, should take with him some of the blank certificates of deposit upon which defendant S. D. Simpson would sign his name as Cashier, for the purpose of securing upon them funds replace the public deposit that was about to be withdrawn from said Bank; that thereupon five blank certificates without date, amount, maturity or payee written therein, but simply being signed by S. D. Simpson, Cashier, in the manner that such certificates were always signed, were given to the said W. G. Simpson for the said purpose and that he thereupon went to the State of Mississippi, from which point, on April 9th, 1913, he succeeded in making a loan of \$2500 from a Bank at Monticello, Kentucky, upon his own personal note for that amount with a certificate of deposit for \$2500 attached thereto as collateral security, and the defendant W. G. Simpson thereupon in Mississippi, with a typewriter, put the date of March 27th, 1913, in No. 1991 of said certificates and wrote his own name as payee therein and wrote six months as the

maturity thereof and made the amount to be \$2500, and thereupon on said 9th day of April, transmitted the same to the innocent holder at Monticello, Kentucky, who discounted the \$2425, which said amount the said W. G. Simpson transmitted to S. D. Simpson, Cashier of the American National Bank of Caldwell, Idaho, with a letter instructing the said S. D. Simpson to credit the said amount to the certificate of deposit account, advising him that No. 1991 had been negotiated for that amount, due in six months, but the same was deposited by S. D. Simpson to the credit of W. G. Simpson's individual account from which it was checked out by them prior to August 20, 1913, and be it further remembered that defendant S. D. Simpson testified that he remembered there was a letter with the said check but did not remember that it contained any instructions as to the disposition thereof.

And be it further remembered that this being the only testimony showing when or where or at what place the certificate in question was issued, or put forth, the defendants requested in writing that the court should charge the jury as shown in charge No. 1 and charge No. 3 and charge No. 4, duly and seasonably before the court had given his general charge to the jury, but that the court failed and refused to give the said charges or either of them, in whole, or in part, or in substance, but charged the jury that it was quite unimportant whether the certificate was issued in blank or not; if in blank, and if S. D. Simpson delivered it to his brother with



authority to fill in the blanks and to negotiate it, in contemplation of law, that was the same as if it had been delivered to W. G. Simpson fully filled out with authority to negotiate it, to which action of the court in failing to give the said special charges and in giving his general charge as indicated, the defendants and each of them, duly and seasonably, in open court, and before the jury retired, excepted and still except.

And be it further remembered in this connection that the testimony showed the following and no other facts relating to the certificates of deposit of the American National Bank, to-wit: That after the establishment of the American National Bank about the year 1910, two thousand blank certificates of deposit were ordered printed, like the one set out in the bill of indictment, save that the date, payee, amount, maturity and name of signing officer were blank, and numbered from 1 to 2000, inclusive; that such certificates had been used in the regular course of business up to about the number 1900 by March, 1913, at which time, the defendant S. D. Simpson, took from among such blanks, forty or fifty ahead of the number next for use at that time, five blanks and handed them to his brother, upon each of which he had signed his name as cashier in the regular way, and that such blanks were not filled in any other manner. That the bank officers continued to use the blank certificates until some time in August, when one Johnston applied for a certificate of deposit and in the regular serial numbers thereof,



1991, should have been the next for issue, but such number was the first of the five numbers that had been given to W. G. Simpson by S. D. Simpson and was not, therefore, available;

Some time previous, seeing that the blanks were running low, the Bank had ordered another batch printed and by some error according to the testimony of the defendants caused such serial numbers thereon to begin with 2000 instead of 2001, as should have been done, because the old series included the number 2000. From this new printed batch S. D. Simpson according to his testimony, and there was no direct testimony against it, took the blank numbered 2000, erased the 2000 and with a numbering machine placed, or caused to be placed, the number 1991 thereon, and this numbered blank was thereupon filled out and issued to Johnston and tendered in the certificate of deposit register, the other blanks which had theretofore been given to W. G. Simpson having been returned, they were in due course issued and thus the regular sequence of the numbers was maintained. S. D. Simpson said nothing to anybody about the transaction, telling neither directors, nor employees, nor bank examiner, until September 27th, when the certificate that W. G. Simpson had negotiated in Kentucky appeared at the American National Bank for settlement and S. D. Simpson then took it and showed it to the directors and arrangements were made to settle it, and it was settled, and be it further remembered that the Government offered the testimony of a bank examiner to the

effect that if the space in the C. D. register reserved for the entry of certificate No. 1991 has been left blank or had the entry "cancelled" therein, he could have required the production of said certificate or a satisfactory explanation of its whereabouts.

And be it further remembered that upon the submission of the plea of jeopardy and former acquittal, the following facts were proven: That at the September term of the United States District Court for the Southern Division of the District of Idaho, before the Honorable F. S. Dietrich, there was called regularly for trial Indictment No. 563, United States vs. S. D. Simpson and W. G. Simpson, and that thereupon the defendants were arraigned and plead not guilty thereto, an exact copy of which indictment is attached to the defendants' plea of jeopardy in this case, such indictment bearing the same number as does the indictment upon which these defendants were convicted at the February term of said Court, and thereupon a jury was duly impaneled, composed of D. M. McGlenn, and eleven others, and thereupon Government witnesses were sworn and testified and during the days of September 16th, 17th and 18th the said cause was heard and tried in said Court, which court had jurisdiction and that on the 18th day of September, 1914, the Government rested its case and the defendants rested their case, and the Government closed its case and thereupon the defendants closed their case, and counsel for the Government argued the cause to the court and the jury and counsel for the defend-

ants argued their cause to the Court and the jury, and thereupon the last of said counsel, to-wit: William H. Atwell moved the court to direct a verdict for the defendants, which said facts are more particularly shown in the journal of the court for September 18th, 1914, a copy of which is attached to the Government's replication to the defendants' plea of jeopardy herein, and which action was as follows, to-wit: That the said counsel moved the court to preemptorily instruct the jury to return a verdict of not guilty, which action was opposed by counsel for plaintiffs and after argument the court ordered that said motion be denied, to which ruling, the defendants excepted, and the court thereupon ordered that the indictment be quashed and discharged the jury, all of which is shown by said journal entry of September 18th, 1914.

And be it further remembered that the following is the testimony of Defendant, S. D. Simpson, upon direct examination bearing upon the question of the issuing or putting forth of the certificate of deposit mentioned in the bill of indictment, to-wit:

*Testimony of S. D. Simpson.*

Q. About how many certificates or deposit had you issued up to the 1st of March, 1913?

A. Something over 1900. I couldn't say.

Q. Can you refer there to the book and tell? About 1900. we will say. Was W. G. Simpson in Caldwell then?

A. In March?

Q. Yes.

A. Yes.

Q. Upon what date did he leave there?

A. About the 20th of March.

Q. About the 20th of March?

A. Yes sir.

Q. Did you and he have any discussion with reference to the imminency of the transfer of these official deposits?

A. We did.

Q. And what, if anything, you should do?

A. We did.

Q. What was that?

A. To raise money to meet the withdrawal that was bound to come, on account of the change of city ordinance dividing the money between the four banks.

Q. Did you set upon any method to accomplish that?

A. Yes.

Q. What?

A. To see if he could raise some money down south to help meet the withdrawals.

Q. Upon what was he to attempt to secure it?

A. On certificates of deposit.

Q. Did you give him anything?

A. Yes.

Q. For the purpose?

A. Yes.

Q. What did you give him, Mr. Simpson?

A. Several blank certificates of deposit.

Q. How many numbers back in the unissued numbers were the numbers that you gave him?

A. I don't understand that question, Mr. Atwell.

Q. Up to the time that he left there and that you gave him those, I assume you had issued a certain number of certificates, the bank had issued a certain number up to that time?

A. Yes.

Q. Did you take out the blanks right then and there, the next that would be used?

A. No.

Q. How far back in the numbers did you go to find those that you did give him?

A. I think about fifty; we must have skipped about fifty.

Q. What numbers did you give him?

A. I think beginning with 1991.

Q. And then how many did you give him?

A. Five or six; I don't remember exactly; several.

Q. Beginning with 1991 and on?

A. Yes.

Q. Why did you skip any?

A. Knowing it would take him time to negotiate these, so that the numbers would be arranged properly on the book.

Q. Did you expect to issue any while he was gone?

A. Yes, we issued them every day nearly.

Q. Was that why you left some there in consecutive order?



A. Yes.

Q. Did you give them to him in blank?

A. Yes.

Q. Did you sign them?

A. I signed them, but no amount or date.

Mr. Atwell: May I ask you gentlemen if you have a blank certificate?

Mr. Smead: Not that I know of.

Mr. Atwell: Q. This is Exhibit No. 3. Is that one of the blanks that you gave him?

A. It is.

Q. Now hold it so that the jury can see it and tell them just what shape it was in when you gave it to him.

A. My name was signed down here. That was all that was written in the certificate

Q. In other words, when you gave it to him none of the blanks in that certificate were filled at all, is that correct?

A. No.

Q. Was the date in it?

A. No.

Q. Was there anything filled in up there as to amount or to whom it was payable?

A. Nothing whatever.

Q. Or when it was payable?

A. No.

Q. The only words you put in at all in writing was your signature, S. D. Simpson, on that bottom line?

A. That's all.

Q. Is that correct?

A. That's correct.

Q. Did you give him any others than this one at that same time?

A. Yes.

Q. About how many?

A. Five or six.

Q. Were they different from this?

A. Just like that.

Q. Exactly?

A. Signed in blank.

Q. Any difference in numbers?

A. Yes.

A.Q. This is 1991.

A. The numbers followed right along.

Q. Consecutively after this?

A. Yes.

Q. And they were also blank except that you put your name, S. D. Simpson, on the bottom there?

A. Yes.

Q. On August 1st, I think that is, 1913, appears a certificate to have been issued to one Mr. Johnson for one hundred and some odd dollars.

Mr. Hawley: That is Exhibit No. 9.

Mr. Atwell: Exhibit No. 9.

Q. What is the number on that, Mr. Simpson?

A. 1991.

Q. Was that the number that was originally on it?

A. No; it was originally 2000.

Q. Was there any other certificate in the bank numbered 2000, blank certificate?

A. Yes.

Q. Tell the jury how that happened?

A. The new certificate we had ordered commenced with the number 2000, and the last certificate of the old ones was numbered 2000, so when we came to 1991 we didn't have a 1991 in the bank, so I either changed it or had it changed, it was changed at my request, one of these two thousands to 1991, and issued to Mr. Johnston, so the numbers would be arranged properly in the register.

Q. Then when you came to certificate number 2000 you found that in the new series?

A. Yes.

Q. And that made no two certificates bearing the same numbers?

A. That is right.

Q. Was that the reason you did that?

A. Yes.

Q. Did you have any idea, Mr. Simpson, as to whether he would be able to do anything with those blanks you had given him or not?

A. I thought he would.

Q. Did you have any idea as to who he might use them with?

A. Well, I didn't know, no, not the names, any special names.

Q. Where was he going with them?

A. He was going to Meridian, Mississippi.

Q. How long was it after that until you heard anything more about those blanks?

A. The latter part of August.

Q. From whom did you hear?

A. W. G. Simpson.

Q. Prior to the latter part of August had there been any money received, a considerable sum, from Mr. Simpson.

A. Yes.

Q. What amount was that?

A. \$2425.00.

Q. How was that received?

A. By check on the Southern National Bank of Louisville, Kentucky.

Q. Did your brother have an account at the Southern National Bank of Louisville, Kentucky, prior to that time?

A. Yes.

Q. How long had he had an account there, to your knowledge?

A. I don't know; quite a while.

Q. Well, about?

A. A few months, I will say.

Q. Why didn't you credit that amount up to certificates of deposit in the bank, instead of to his account?

A. I didn't know that he had negotiated a certificate of deposit.

Q. When did you ascertain that he had negotiated one?

A. The latter part of August.

Q. From whom?

A. From my brother.

Q. From your brother?

A. Yes.

Q. How did you ascertain that?

A. He told me when he came to Caldwell.

Q. How did he happen to find that out?

A. He was looking over his account on the ledger.

Q. What was there on the ledger?

A. And asked about this \$2425.00 credit, to know what that was, and I told him it was the check he sent us on Louisville, and he told me that was for the proceeds of his note, to which he had attached a time certificate of deposit for \$2500.00.

Q. Now prior to the time of his coming there and telling you that, had you received back from him the other blanks?

A. No.

Q. When did you receive the other blanks?

A. The latter part of August.

Q. Along about that time? It was in August, at any rate, that you received the other blanks?

A. Yes.

Q. And you had them for issuance to the regular customers of the bank when you got to those numbers?

A. Yes.

Q. And did you use them in that way?

A. Yes.

Q. As shown by the certificate of deposit book there?

A. Yes, sir.

Q. Are you able to tell the jury as to whether you gave him five blanks or six blanks, or more, or what? What is your best recollection about that?



A. I couldn't say, more than five or six, is my best recollection.

Q. Your best recollection about that?

A. Yes.

Q. Do you recall placing the return blanks among the other unused blanks when they were returned to you?

A. Yes, sir.

Q. In what condition was the bundle of blanks then? Had they come loose and were they bound with a rubber band, or were they mucilaged together?

A. They had come loose, and I just put a rubber band around them.

Q. Now prior to your brother's coming in August, and after you had received the \$2425.00 check, his account shows there a check against it, or a charge against it, of \$1025.00, and your account shows the same credit. How did that charge and that credit arise?

A. I charged my brother's account with \$1025.00 to pay one half of my father's note.

Q. What did you do with the charge, to offset that charge in your brother's account.

A. I credited my account.

Q. You credited your account?

A. I credited my account.

Q. Then how did you pay that note?

A. I don't remember if I gave a check for \$2050.00, paying the note and interest, or whether I gave a check for \$1025.00 and the other in cash.

Anyway the note for \$2000.00 with interest was paid, my brother paying half and me half.

Q. That was a note of your father's, upon which you and your brother were sureties?

A. Yes.

Q. Was that note formerly held by the American National Bank?

A. It was.

Q. And how did you get it out of the American National Bank into where?

A. Into the Boise City National Bank here.

Q. At whose request did you take that note out of the American National Bank and put it in there?

A. It was criticised by the examiner.

Q. Do you remember who the examiner was?

A. Yes.

Q. Who?

A. Mr. Fred Brown.

Q. The gentleman in attendance here?

A. Yes.

Q. What authority did you have to charge your brother's account with that thousand dollars or to draw a check on it?

A. Well, I always had the authority to draw checks against his account. He gave me that authority as a perfect right.

Q. No objection to that?

A. No objection at all.

Q. When did he ascertain that you had paid that note of your father's?

A. The latter part of August.

Q. When he came there?

A. Yes.

Q. When, before the trials in this court, did you see, the first time after you had given blank certificate number 1991 to your brother, did you see it?

A. September 27, when it was presented for payment and I paid it.

Q. What did you do with it when you got it?

Mr. Smead: We object to what he did with it as immaterial.

A. Mr. Walters took it—

Q. Mr. Smead: We object to going into this matter. It is the same matter that has been ruled on several times here.

The Court: He can state what he did with it. Do you mean handed it to someone?

A. When it was presented for payment, Your Honor.

Mr. Atwell: Q. What did you do with it when it was presented for payment?

A. I called a meeting of the directors.

Mr. Smead: We object to going into that matter at all, Your Honor.

Mr. Atwell: Q. Did you hide that certificate anywhere?

A. I did not.

Q. Did you try to conceal it?

A. I did not.

Q. Did you tear it up or destroy it?

A. I did not.

Q. But you took it to the directors?

A. Yes, sir.

Q. In the transaction of these matters about which I have questioned you and the Government had shown here by its testimony, did you have any intent to either injure or defraud that bank?

A. I did not.

Mr. Smead: We object to that question, Your Honor. A man's intent is judged from his actions and not by what he says afterwards.

The Court: He may answer the question. The jury will judge the matter in the light of all the circumstances.

Mr. Atwell: Q. Did you have any intent whatsoever to injure or defraud that bank out of a penny?

A. I did not.

Q. Don't answer this until it is ruled upon. Did you do so?

Mr. Smead: We object to that as calling for a conclusion of the witness.

The Court: Sustained.

To which action of the court in failing and refusing to permit the defendant to show that, as a matter of fact, the certificate of deposit had been ratified by the board of directors, and had been paid by a fund raised from the note of Director Walters to secure which note this defendant had executed a deed to his home and that a few days afterward, the Walters note was paid by a check from W. G. Simpson for the entire amount of \$2500, but that the Bank continued to and still keeps the property deeded to it by the defendant, S. D. Simpson, to which action of the

court, the defendants then and there duly and seasonably excepted and still except.

And be it further remembered in this connection that the defendants and each of them made the following tenders of proof, to-wit, such tender, under the ruling of the court, not being permitted in the hearing of the jury:

Mr. Atwell: The defendants offer to prove by the directors who were directors of the American National Bank on September 27, 1913, that they held a meeting on that date, wherein they had before them the certificate of deposit which is the basis of this indictment, and with knowledge of the facts they ratified its issuance and ordered its payment, and accepted from these defendants \$2500 in payment thereof, plus a deed on S. D. Simpson's home.

The Court: The deed then was given to secure other indebtedness?

Mr. Lingenfelter: No, not originally.

The Court: Then I don't understand you. You say they received the full amount and also took a deed, to secure what?

Mr. Atwell: We offer to prove that after these facts were known with reference to the issuance of this certificate, thereupon Director Walters gave his note for the amount of the certificate, which passed into the loans and discounts of the bank, and the proceeds of that note were used to retire and pay the certificate. Simultaneously with the giving of Walters' note, S. D. Simpson deeded his home to



Walters or the bank, that within one week's time thereafter, W. G. Simpson, when he learned of the facts, sent his check for \$2500, plus, to pay in full the certificate of deposit, No. 1991, and the bank continued to keep the deed to defendant, S. D. Simpson's home.

The Court: The tender is declined.

Which testimony the court then and there refused to permit the defendants or either of them, to which action of the court in so failing and refusing, the defendants then and there, duly and seasonably, in open court, excepted and still except.

And be it further remembered that the defendant, W. G. Simpson, testified with relation to the certificate in question as follows, to-wit:

*W. G. Simpson. (Extract from testimony on direct.)*

Mr. Hawley: Q. While there on that occasion did you investigate the condition of the American National Bank?

A. In a way I did

Q. Did you have any understanding as to its financial condition so far as being threatened with loss of deposits was concerned?

A. I was informed at the time that they had a large amount of public money on hand, state and county and city, which aggregated several thousand dollars.

Q. Did you receive any information with reference to threatened withdrawals of a portion of these funds?

A. Well, I learned that there was a movement on foot to divide some of the city funds, and probably a withdrawal of some of the county funds in a short time.

Q. Did you inquire into the effect that this would have upon the bank, so far as its legal reserve was concerned?

A. I don't know that I inquired into it, but I was informed that it would reduce the cash to the extent of the withdrawals.

Q. Who did you take this matter up with, if anybody?

A. Well, the matter I think was taken up with me. Most of the conversation, perhaps all of it, was with my brother. He was the active cashier, active officer in the bank.

Q. Was there any conclusion come to in regard to relief?

A. I didn't get that question.

Q. Was there any method devised to relieve this condition?

A. Well, there was some suggestions offered about getting money at the proper time, arranging for the distribution of these funds.

Q. What arrangement, if any, was finally made?

A. Well, there was several suggestions made. Among them was to raise some money on time certificates of deposit, others by rediscounts or executing notes to some of their correspondents.

Q. What was finally concluded upon, when, and by whom?

A. Well, I thought I might be able to raise some money down south on certificates of deposit. I don't know. I agreed to make an effort along that line, and before I got ready to leave I was given five certificates of deposit, signed in blank, that is, the cashier's name was signed to the certificates, but they wasn't filled out for any amount. Those certificates were numbered 1991 to 1995 inclusive.

Q. Was the name of the payee put in these?

A. It was not.

Q. Nor the sum?

A. Nor the amount. Neither was the date inserted.

Q. Was there anything done so far as these certificates were concerned outside of the signature of the cashier?

A. I think I gave a receipt for them, is my recollection, that I gave a receipt for the certificates.

Q. Was there anything done so far as marking or filling out these certificates, outside of signing the cashier's name?

A. There was not.

Q. When was this done, as near as you can recollect? If you can't recollect the date, state it with reference to the time you left Caldwell.

A. Well, it must have been done back somewhere between the 17th and the 20th of March; I couldn't state positively.

Q. Who gave you these certificates?

A. My brother, S. D. Simpson, the cashier.

Q. And you took them, did you?

A. I did.

Q. What was the understanding in regard to them at the time you took them, as to what disposition you would make of them?

A. Well, the understanding was that if I could negotiate any of them I was to do so, and send the money in to the bank, and give him the number of the certificate, and the date, and the amount, and who it was made out in favor of.

Q. And who was to do the filling in so far as the amount, and number, and the date and all that?

A. I was to do that.

Q. Was there any particular persons mentioned or any particular institutions with whom you were to deal, or was that left open?

A. That was left open with me, because I didn't know just where I could handle them.

Q. What was the understanding as to the disposition of any funds arising from the sale of these certificates?

A. I was to remit him or remit on Chicago for the credit of the bank, either.

Q. When you say remit to New York or Chicago, what do you mean? Did you have correspondents there?

A. Remit to the correspondents of the bank for their credit.

Q. To the credit of the Caldwell bank?

A. Yes, to the credit of the American National Bank of Caldwell.

Q. Was there any particular method agreed upon

under which this should be done, or through which this should be done, outside of that which you have stated?

A. No, I don't think there was.

Q. Do you remember the date you left Caldwell?

A. No, I couldn't state the date positively. It was somewhere between the 16th and the 20th, I think.

Q. Then these certificates were in your possession how long before you left Caldwell?

A. I don't remember whether they were given me the day I left there or the evening before I left; I don't know whether I left at night or in the day. This is a matter of presumption on my part. If I left there in the day they were given me on the day before I left.

Q. You were still acting as president of the bank at this time, that is, your successor had not been elected?

A. No, my successor hadn't been elected at the time.

Q. You occupied that position then?

A. Well, I presume so.

Q. State where you went from Caldwell.

A. Well, I first went to Chicago and stopped off there I think a couple of days, maybe one day and night, and then I went from there to Lexington, Kentucky, and stopped there I think about a couple of days, and then to my home in Meridian, Miss.

Q. You may state whether you were still engaged in the banking business at Meridian at this time.



A. I wasn't at that time, no.

Q. And did these visits to Chicago or Lexington have anything to do with the attempted disposition of certificates?

A. My stop over in Chicago did, but not in Lexington. That was a social visit there, among relatives.

Q. You may state if you made efforts to dispose of them in Chicago.

A. I made some inquiries in Chicago as to the probability of disposing of them, but didn't get encouragement, and I didn't mention the fact any more then until I got home to Meridian, Mississippi.

Q. You may state what measures you took, if any, after reaching home, what efforts you made to dispose of these certificates.

A. Well, I approached a few individuals there who I knew had money, to know if they would like to handle some of them for six months, and they made some inquiries about the bank and its location, and I told them where it was, and they intimated that it was most too far away, and they didn't care to handle them that far away from home; and I wrote some letters to some friends in Kentucky, and among the number that I wrote to was Mr. W. L. Baker, cashier of the Monticello Banking Co.

Q. Wrote to them on this subject?

A. Yes, I wrote him on March 31st, asking him if he could—

Mr. Smead: We object to any statement of what he asked him. The letters are in evidence.

The Court: Sustained.

Mr. Hawley: The letter you wrote is in evidence. You supplied copies of that correspondence when Mr. Baker was on the stand, did you not,—this correspondence you gave to me?

A. Yes. There is some here in evidence, but—

Q. Was that all of the correspondence?

A. No.

Q. Was this particular letter you refer to, the first letter in evidence, all?

A. No, that isn't all. I wrote him March 31st, and he answered it on April 2nd.

Q. This letter of March 31st has not been produced in evidence?

A. I don't think it has.

Q. Was there a copy of it produced in evidence?

A. I don't think there was.

Q. Have you a copy of it? Did you search for the copies of your correspondence with Baker?

A. Yes, I searched for a copy of that first letter I wrote him, and couldn't find it, and I wrote to him to furnish me the original, but he didn't have it.

Q. You may go on and state what you wrote to him in that first letter. State the contents of it.

A. I wrote him and asked him if he could handle \$2500 or \$5000 worth of these certificates of deposit, to run six months, and he answered and said—

Mr. Smead: We object to what he answered.

Mr. Hawley: Q. Is his answer to that letter on file?

A. It is on file here.

Q. That is one of the letters on file of date April 2nd, is it not, about that time?

A. It is either April 2nd or April 3rd, in answer to my letter of March 31st.

Q. Well, leaving out the correspondence, what was finally done with reference to this matter?

A. He agreed to loan me \$2500, and take one of the certificates or a \$2500 time certificate as collateral. He enclosed me a blank note to execute, which I did. I executed the note, and filled out the certificate on the 9th day of April.

Q. Filled out the certificate of deposit?

A. Yes, on the 9th day of April, for \$2500, in my favor, attached to my note, and sent it to Mr. Baker, as cashier of the Monticello Banking Company.

Q. What date did you put on that certificate?

A. March 27th.

Q. Why did you put on March 27th?

A. Well, my note was dated April 9, 1913, and was due six months after date, which would make it due about October 9, 1913, and I dated the certificate back long enough to make it fall due by the time my note did, so I would have the money to take my note up with when it fell due, as I was getting the money for the bank.

Q. You may state what you did, if anything, so far as transmitting the proceeds of this transaction to the bank.

A. Well, when I filled out the note and signed it and mailed it to him, I wrote him to remit me—

Q. Wrote who?

A. Wrote Mr. Baker, the cashier of the Bank, to remit me the proceeds of it to Lexington, Kentucky, as I was going up there about the same time that my letter left home. I got there, and received that letter on the 11th day of April, with a draft in it drawn on the Fifty Third National Bank of Cincinnati by his Bank for \$2425.00. I endorsed that draft and mailed it to the Southern National Bank of Louisville for my credit,—I had an account with that bank,—on the 11th day of April, and on the same day I drew my check on the Southern National Bank of Louisville in favor of the American National Bank of Caldwell, and enclosed them the proceeds of this money that I had secured on this certificate and my note.

Q. What was the proceeds?

A. \$2425.

Q. And the certificate itself was for \$2500?

A. \$2500. The interest for six months was deducted from my note, which left \$2425 net.

Q. You may state what you did with that check that you drew.

A. I enclosed it in a letter to the American National Bank of Caldwell.

Q. Is this the check that has been testified to heretofore and marked Exhibit No. 3, the check to the American National Bank?

A. No. I have that check in my pocket.

Q. Will you produce that check?

A. I will.

Q. This is the same certificate that was num-

bered 3 in evidence, the certificate you have been testifying to?

A. I don't know the number, Governor. Do you want the stub of my check book too?

Q. I hand you defendant W. G. Simpson's Exhibit for identification marked "A" and ask you what that is.

A. This is my check drawn on the Southern National Bank of Louisville, Ky.

Q. Don't state the contents. That is the check you have testified to?

A. Yes.

Q. That is the check you gave at that time?

A. Yes, that is the check I gave at that time.

Q. You may take Defendant W. G. Simpson's Exhibit B for identification, and state what that page marked is. Just state whether it is your check book or not.

A. This is my check on the Southern National Bank of Louisville.

Q. Is that the stub?

A. With the record of that check.

Mr. Hawley: The check itself then, if Your Honor please, we will read to the jury (reading check).

Q. I want to ask you in regard to these figures there, those figures in pencil. What are they?

A. That is 2425. I don't know who put that there. That is a memorandum somebody put there.

Q. That is often done in banks, is it not, when there is doubt about the figure?

A. Yes.



Mr. Hawley: If your Honor please, I desire to introduce as part of this evidence the stub book.

Q. I will ask before I do this, when was this entry made in this check book?

A. On the 11th day of April, 1913.

Q. Right at the time you drew the check?

A. I always fill out the stub before I draw the check, and then I fill the checks out following.

Q. It was done in the regular course of business, as you do business?

A. Yes.

The Court: What do you offer this for?

Mr. Hawley: For the purpose of showing the good faith of the party, the record of this whole transaction, in a continuous say, having the entire record before the jury, showing that it was done in absolute good faith, showing that—

The Court: But what does it tend to prove? I don't see how it bears on the question of good or bad faith.

Mr. Hawley: It shows that the check was drawn in the regular course of business, your Honor, as a regular business transaction. All those things when done in that way go to the bonafides of the party.

The Court: The objection is sustained.

Mr. Hawley: Q. You say that you wrote a letter, or you say that you sent this check to the American National Bank?

A. I did.

Q. Of Caldwell?

A. Yes.

Q. Directed to whom?

A. Directed to S. D. Simpson, cashier of the American National Bank of Caldwell.

Q. You say that you wrote a letter at that time?

A. I did.

Q. And did you retain a copy of that letter?

A. I did.

Q. Have you a copy of that letter?

A. I have.

Q. Please produce it.

(Witness complies).

Q. Is this the impression copy of the letter?

A. It is.

Q. Was the original letter sent in the same way or without alteration, except so far as this is concerned?

A. It was.

Q. It is a copy of the letter as sent?

A. That is a copy of the letter that went with the check.

Mr. Hawley: Please mark this Defendant W. G. Simpson's Exhibit C, for identification.

Said document was so marked.

Q. Was the envelope containing the check and the letter duly mailed by you?

A. It was.

Q. And deposited in the United States postoffice?

A. Yes.

Q. Your signature is not to this copy of it?

A. No, that is just a copy.

Mr. Hawley: We desire to present this letter, gentlemen.

Q. Was there any other letter sent besides this one, the original of which this is a copy, by you, in regard to this matter, at that time?

A. There was not.

Q. That was the only letter?

A. Yes, sir.

Mr. Hawley: I will read to you defendant's Exhibit C, gentlemen. (Reading Defendant W. G. Simpson's Exhibit C.).

*Defendant W. G. Simpson's Exhibit C.*  
Copy.

April 11th, 1913.

Mr. S. D. Simpson, Cashier,  
American National Bank,  
Caldwell, Idaho.

My Dear Brother:

I have succeeded in placing your Time Certificate No. 1991 for \$2,500.00 and enclose you herewith my check on the Southern National Bank of Louisville, for the proceeds of same \$2,425.00.

I could not place the certificate direct but had to put up my note for the amount and attach the certificate to same as collateral, therefore it is made out in my favor and dated March 27th, and due six months after date which will mature in ample time to take care of my note.

You will therefore debit "Interest Paid" \$75.00 and my check enclosed for \$2,425.00 will make the credit of the certificate \$2500.00 which I suggest that you enter as "Time Certificates for Money Bor-

rowed" while the C-D is not in a way placed, it is placed because it is out as collateral to my note for the use of the bank.

I had to pay 6% for the money as I could not get it at 5%. Could I have gotten it at 5% rate direct without having to put up my note, it could be entered as a regular C-D but money is tight in this section as well as in the West.

I hope this will give you some relief and if I am able to handle the others or any of them will do so and report to you giving numbers dates amounts and etc. so that the proper entry can be made at that end of the line, in the meantime I hold the other certificates subject to your orders and I assure they are safe in my deposit box and will be taken care of and accounted for to you at any time.

Your last statement shows a good reserve and I cannot understand why you should carry such a large reserve, for 15% is all required by law but I believe you should carry in that section at least 25%, but its better to be "safe than sorry" so keep close to the shore and if you need help I will do all I can to assist you.

It would be a difficult matter to place your "C-D" so far away from home even if you pay 1% more than the banks here do, and I have some doubts as to being able to handle them unless I do as I had to do this one, make a note for the amount in addition to the certificate itself.

With love from us all to you yours, I am,  
Your brother.

Q. The original of this was signed with your name?

A. Yes, sir.

Q. When you mention C. D. in capital letters there, what do you mean?

A. Certificate of Deposit.

Q. That is the term that is used among bankers?

A. That is the term by which we designate certificate of deposit. C. D.

Q. I see there is no place marked on this letter showing the place from which it was written. Do you remember what letter head you used and whether those letter heads were printed?

A. That was written from Lexington, Kentucky.

Q. On a printed letter head?

A. I think it was on some of my stationery that I had been using, a printed letter head, is my recollection.

Q. You may state to the jury whether or not you made further effort to dispose of these C. D's.

A. Yes, I made some other efforts to dispose of some of them.

Q. With what success?

A. Without any success.

Q. What time was it you next was in Caldwell after sending this letter and this check?

A. I think it was along in August, some time in August, 1913, somewhere from the 15th to the 20th of August, is my recollection.

Q. Where in the meantime had you been?

A. I had been at Lexington, Kentucky, since about the first of May, had been living there.



Q. Had you engaged in banking there?

A. I was. I was connected with a bank temporarily.

Q. And do you recollect the time that you came to Caldwell in August, 1913? Can you give us the date with any greater certainty than saying it was in that month?

A. It must have been around the 18th, somewhere from the 15th to 18th, that I got to Caldwell in August.

Q. Did you come alone or with your family?

A. No, my family was with me. We came part of the way through the country in an automobile.

Q. A business trip or a vacation?

A. A kind of a vacation and business trip combined.

Q. After reaching Caldwell did you make any examination, or did you have any talk with any of the officers of the bank with reference to your banking matters to your account in the bank, or did you make any examination of it?

A. After I had been there a day or two I asked something about how my account stood.

Q. You may state whether or not you had deposited money and had been drawing out money on your checks?

A. I had. I had been depositing and drawing regular on the bank, and sending money there for credit.

Q. You had kept a regular checking account there, had you?

A. Yes, I kept a regular checking account there.

Q. And did you examine, or had you received during this time your bank statements?

A. No, I had not.

Q. Were you in the habit of receiving your bank statements from the bank at Caldwell?

A. No, not regularly. Every once in a while I would get a statement, maybe six months or three months, something like that, but I hadn't had one I don't think that year.

Q. You hadn't had one since sending this \$2425?

A. No, I don't think I had had one since January of that year.

Q. Did you make any examination of your account?

A. Yes, I looked over it and saw some entries there that I didn't understand, and I asked some questions about them.

Q. What entries do you refer to?

A. Well, I refer at this particular moment to a credit there of \$2425.

Q. Who did you ask in regard to that after you ascertained it?

A. I asked my brother, S. D. Simpson, the cashier.

Q. State what was said and done.

A. I asked him what that was, and he said he would look it up, and he went into it and informed me in a few minutes—it didn't take him long—that that was my check drawn on the Southern National Bank of Louisville, for \$2425, that I had sent him some time in April, and when he told me what it was

I told him that that was for a time certificate of deposit, and should not have been entered to my credit, and he said he didn't know it, and I told him I wrote him a letter with it. He said he didn't remember about the letter, and he would look it up, and he spent several days there looking for the letter, but he couldn't find it, and when my trunk got in out there I looked in my letter files and got the copy out and showed him. That was about the result of that particular item.

Q. You may state if about this time you made any effort or if you made any effort up to this time to have an extension of your note with this collateral?

A. No, I had not.

Q. State whether or not you had come to any conclusion at this time with reference to that. If so, what it was.

A. We discussed the matter there.

Q. When you say we, who do you mean?

A. I mean me and my brother. We discussed the matter there for a few days, and I said this certificate was out but it hadn't been entered, and we would just take it up, and he suggested that I write to Mr. Baker, the cashier of the Monticello Banking Company, for a renewal, that he couldn't very well handle it before January; so at his request I wrote Mr. Baker for an extension or a renewal of the note, if it was convenient for him to grant it, I would like to have it, so that it would give him some little while to get the money in.

Q. Do you remember where you wrote this from? Was it from Caldwell, while you were there?

A. I wrote that letter from Caldwell, Idaho, is my recollection.

Q. You may examine Plaintiff's Exhibit No. 21, and say whether that is the letter, or a copy of the letter you wrote at that time.

A. It is.

Q. You may state if in the copy of that letter you gave him any directions as to where to write to you?

A. I told him to notify me at Lexington, Kentucky. I was going to go back there in a few days.

Q. What was your intention at that time so far as going away from Caldwell and going back home?

A. I had some business back there to look after, and I was on my way there for that purpose.

Q. You had business to look after in Lexington?

A. I did.

Q. What time did you actually leave Caldwell, if you recollect, to go back to Lexington?

A. I couldn't state, but it was a few days after I wrote that letter.

Q. And you did go to Lexington?

A. I did, yes.

Q. Do you remember what time it was you got to Lexington?

A. No, but it was some time in September. I couldn't give the date of the month, nor the day of the week, but the only way which I can refer to it, is, I went to Lexington from Louisville, after the Kentucky Bankers' Association had adjourned. I at-

tended that in Louisville that week, but I couldn't give the exact date.

Q. Did you hear from Mr. Baker after getting there?

A. I did.

Q. You received one of these letters that has been put in evidence?

A. Yes.

Q. Did you ascertain from his letter whether or not this extension of time could be given?

A. I inferred from his letter that he didn't care to extend the time, and had forwarded the certificate for collection.

Q. You may state what your object and intent was in asking for that length of time, for that extension of time on that note, as shown by your letter?

A. Well, it was to give the bank a few days or a few months, if necessary, to get up the money in.

Q. That is, the American National Bank?

A. Yes.

Recess until 2 P. M.

2 P. M.

Q. I believe, Mr. Simpson, when we concluded this forenoon, that you were being questioned with reference to what you did after leaving Caldwell in August, and that I had inquired of you with reference to your communication with Mr. Baker and his bank in regard to an extension of time. That is correct, is it not? You had communicated with him asking for the extension of time?

A. I had, yes.



Q. And this was done by letter that you wrote at Caldwell, the letter that is in evidence?

A. Yes.

Q. And how long was it after you got home before you went to Lexington? You have spoken at attending the banquet in Lexington.

A. Just as soon as the Kentucky Bankers Association convention adjourned I went to Lexington that night.

Q. Did you there receive the letter from Mr. Baker that has been introduced in evidence?

A. I did.

Q. That was the letter that informed you that the certificate had been sent on?

A. Yes.

Q. Did you go again to Caldwell after that?

A. Yes, I came back to Caldwell some time in October, I think it was.

Q. Was that September or October?

A. I don't know, but I am inclined to believe it was October.

Q. Your memory is not clear. You have no way of fixing that date positively?

A. No, I can't fix the date exactly from memory.

Q. After you returned to Caldwell what, if anything, was done by you with reference to this certificate of deposit, and this check that was issued? Don't answer this question until the objection is made.

A. When I arrived there in October I was informed that the certificate had come in and had been paid, and I was told how it was paid, and I gave my

check to the bank for \$2500 on the Citizens National Bank of Meridian, Mississippi.

Q. What did that \$2500 that you paid at that time by your check include?

A. That included the face of the certificate—it included the proceeds of my note, plus the discount, or, in other words, it included the face of the certificate, not including the interest that had accrued on the certificate.

Q. You may state whether or not that check was paid?

A. It was.

Q. It was paid to the bank, to the American National Bank?

A. It was. It was made payable to the bank.

Q. Was there afterwards a refund on account of that check that you made? If so, in what amount, and how did it come about?

A. Well, the interest that had accrued on the certificate was collected when the certificate was paid, and the whole amount was remitted to the Monticello Banking Company, and when they received returns got it they remitted me a draft for the accrued interest, less the cost of collection and so on.

Q. What was that amount?

A. I don't remember the amount. I never saw the draft. It went to Caldwell and was received there and went into the bank there.

Q. You heard the testimony given in regard to the check or draft of \$62.50, did you not?

A. Yes, I heard that.

Q. You may say whether that is the check or draft that you refer to now?

A. That is the one I refer to now.

Q. And why was that discrepancy in the amount that was paid by the bank on the certificate and the amount received by you? How did that come about?

A. Well, my note was discounted in the beginning for six months. I only got \$2425. And the certificate bore interest for six months on the face of it. At the end of the six months the certificate called for \$2562.50. My note only called for \$2500.

Q. That gave the rebate, did it?

A. Yes, that was a rebate.

Q. You may state, after you returned in September or October, which ever it may have been, whether you ascertained that your account was in the same condition that it was when you left, the latter part of August, so far as your being credited with the \$2425 was concerned?

A. It was, so far as I remember, if I understand your question.

Q. You may state, Mr. Simpson, if at the time this transaction was consummated in Caldwell and this note or these certificates of deposit were taken from the cashier by you, they were taken by you with any intent on your part to injure or defraud the American National Bank in any way whatsoever?

A. None whatever.

Q. When you gave over these certificates in Kentucky, or this particular certificate of deposit num-

bered Plaintiff's Exhibit A, in Kentucky, you may state whether or not at the time of its delivery to the bank you were actuated in any way whatsoever by any intent to injure or defraud the American National Bank of Caldwell?

A. None whatever. My only intention was to help the bank raise some money.

Mr. Atwell: Q. Mr. Simpson, when the blanks were handed to you at Caldwell, among which was the blank number 1991, you put them in your pocket and took them away with you?

A. I did, yes.

Q. In the blank shape?

A. I did, yes.

Q. Without any names or dates or amounts or payee or maturity filled therein?

A. The only thing that was on them was S. D. Simpson's name as cashier. The balance was all blank.

Q. Tell the jury when and where 1991 was filled in, and by whom.

A. It was filled out at Meridian, Mississippi, on the 9th day of April, 1913, by me, on a typewriter, made out in my favor for \$2500, and dated the 27th day of March, 1913.

Q. At the time you did that your brother S. D. Simpson had no knowledge to whom that would be payable, nor its date nor amount, nor its maturity, did he?

A. None whatever, until he got my letter giving him the information.

Q. I didn't ask you that. When you did it, he had no knowledge of it?

A. No, he had no knowledge of it. I was to notify him.

Q. When you left the Southern Division of the Idaho District of the United States Court, when you left Canyon County, you left here with these certificates blank and nothing in them or on them, didn't you?

A. Nothing but the signature of the cashier, is all.

Q. Now at what time, is it your recollection, that you returned the other blanks, and how did you return them?

A. My mind isn't exactly clear on that. It seems to me like I returned them by mail in July, but I am not sure.

Q. At any rate you kept them some time, and didn't succeed in negotiating them, and then sent them back?

A. I kept them some time trying to negotiate some of the rest of them or all of them, but seeing it was a difficult matter to do so I sent them back, I think it was in July.

Q. Now this certificate appears to be dated March 27th, 1913. Who put that date on there?

A. I did.

Q. It appears to be dated at Caldwell, Idaho. Who put that on there?

A. That was already on there, printed on there.

Q. It appears to be payable to the order of W. G. Simpson. Who put W. G. Simpson on there?



A. I did, with a typewriter.

Q. It appears to be for the sum of \$2500. Who put that amount in there?

A. I did.

Q. It appears to be due in six months after its date. Who put that in there?

A. I did.

Q. At the time and place you have just testified to?

A. April 11, 1913, at Meridian, Mississippi.

Q. Why did you date that certificate back? If it was April 11th that you made it out, why did you date it back to March 27th?

A. I wanted to give it ten days or a couple of weeks to collect it, so that it would meet my note when it fell due.

Q. Your note was dated when and was due when?

A. My note was dated April 9, 1913, due six months after date, which would make it about October 8th or 9th. And I wanted this certificate collected in ample time so as to meet my note when it fell due.

Q. Were you at that time solvently responsible so that you could have paid that note yourself, your \$2500 note?

A. I think I could. Of course that is my—

Q. I know that is your business, but—did you thereafter pay twice that much to the American National Bank of Caldwell?

Mr. Smead: We object to that.

The Court: Sustained.

Mr. Atwell: Q. Now then you testified a while ago that you gave your check for \$2500 in settlement of this certificate, along about the first of October. Do you know what identical transaction took place in the bank at that time, what identical piece of paper it took up?

Mr. Smead: We object to that, your Honor.

The Court: He may answer yes or no. Just answer yes or no, whether you know or not, of your own knowledge.

A. No.

Mr. Atwell: Q. When you got there in the early days of October you ascertained that the certificate had been paid.

A. Yes.

Mr. Atwell: That is all.

Mr. Hawley: Q. What was your object and purpose in giving that check at that time.

Mr. McClear: We object to that. That has already been testified to.

The Court: Sustained.

And be it further remembered to this connection that the Government offered testimony to show and the fact is that there was no money, or any equivalent, deposited for the \$2500 certificate until September 27th, 1913, when the certificate was returned by the Monticello, Kentucky, Bank, for collection and was received at Caldwell, nor was the said certificate entered in any manner upon the books of the bank, nor did the defendant, S. D. Simpson tell any

one connected with the bank that it was out, or had been issued, nor did he make any disclosure thereof to the Bank Examiner, nor to any of the directors, save and except that when the same came in for collection, he took the same to the directors as herein before shown. That there was no testimony, whatsoever, that the blank certificate was filled out anywhere or at any time or place with date, amount, payee, or maturity, save and except as detailed in the foregoing testimony of the defendant, W. G. Simpson.

And be it further remembered that when W. G. Simpson sought the loan from the Monticello holder, that holder replied he would make a \$2500 loan on W. G. Simpson's note with certificate of deposit on collateral and that he would not have made the loan without such collateral and that the Monticello holder testified that he knew nothing about it being a loan for the bank, but that it was, so far as he knew, a personal loan to W. G. Simpson.

And be it further remembered that a short time before the loan matured W. G. Simpson wrote the Monticello holder asking for a return of the certificate and that he be allowed to substitute stock in the American Trust Company of Caldwell, Idaho.

And be it further remembered that the defendant, W. G. Simpson, and the defendant, S. D. Simpson, having testified that in August, 1913, S. D. Simpson had ascertained for the first time that the \$2425 credit which he had entered to the account of W. G. Simpson had really arisen from the sale of the certifi-

cate of deposit, such information coming from W. G. Simpson, who was at that time in Caldwell; that thereafter the Government, over the objection of the defendants, and each of them, was permitted to prove and offer testimony showing that in September, 1913, and prior to September 27th, 1913, the defendant, W. G. Simpson, had borrowed \$3500 from the American National Bank, to which testimony the defendants then and there, duly and seasonably, in open court, excepted and still except.

And be it further remembered that the certificate set forth in the indictment was introduced in evidence and all of the marks and figures and endorsements as set forth in the indictment were contained thereon, and the same on the face thereof read as follows, to-wit:

At Caldwell, Idaho, March 27, 1913.

No. 1991.

W. G. Simpson has deposited in this Bank Twenty-five Hundred and No-100 Dollars payable to the order of himself in current funds on the return of this certificate properly endorsed, six months after date, with interest at five per cent per annum, no interest after maturity.

S. D. SIMPSON, Cashier.

Due Sept. 27.

That the certificate when handed to W. G. Simpson by S. D. Simpson, so the defendant testified, did not contain the words "March 27, 1913," nor the payee, W. G. Simpson, nor the amount Twenty-five Hun-

dred and no hundredths, nor the words, "six months after date," nor the words "due September 27th."

And be it further remembered in this connection that the witnesses Walters, Bradshaw, Devers, Forbes, Porter, Walker and Gates, testified as directors for the American National Bank and that they held such offices on September 27, 1913, and prior thereto; that they had not consented to the issuance of the certificate in question, nor had any knowledge thereof until September 27, 1913, when they ordered the same paid; that they knew that Cashier Simpson was issuing from time to time certificates of deposit, and that his action with reference thereto met with their approval but that they never intended to authorize him by implication or otherwise to issue a certificate of deposit unless the money or equivalent thereof had actually been deposited therefor; that when the certificate in question was brought to them on September 27, 1913, by S. D. Simpson, they held a meeting.

And be it further remembered in this connection that thereupon the defendants offered to prove by said witnesses that they as directors had held a meeting on September 27, 1913, with reference to said certificate of deposit, such meeting being called upon notice of S. D. Simpson, and that the facts with reference to the issuance of said certificate were then and there made known to the said directors and thereupon Director Walters gave his note for the amount of the certificate, which passed into the loans and discounts of the bank and the proceeds of that



note were used to retire and pay the certificate. Simultaneously with the giving of the Walters note, S. D. Simpson deeded his home to the bank, that within one week's time thereafter W. G. Simpson when he learned of the facts, sent his check for \$2500 plus, to pay the certificate of deposit No. 1991 in full, and the bank continued to keep the deed to defendant S. D. Simpson's home, which tender and offer and desire of the defendants to introduce said testimony and proof the court then and there declined and refused, but did direct proof that the defendant paid the amount of this certificate at that time, to which action of the court in so declining and refusing to permit the said testimony, or any part thereof, the defendants then and there, in open court, duly and seasonably, excepted and still except.

And be it further remembered that upon the rebuttal the Government offered testimony to the effect that the public deposits in the American National Bank from March 20, 1913, to September 1, 1913, continued to increase.

And be it further remembered that thereafter on, to-wit, March 2, 1915, and defendants and each of them presented their certain written motion in arrest of judgment for the reasons therein more particularly specified, which was on said date submitted to the court and the court after hearing the same and having heard the argument thereon, overruled, to which action of the court, the defendants then and there, in open court duly and seasonably excepted and still except.

And thereafter, by it further remembered, on the third day of March, A. D. 1915, the defendants presented their certain written motion for a new trial to the court but that the court, after having heard the same in all things overruled the same and refused to grant a new trial, to which action of the court, the defendants then and there, duly and seasonably, in open court, excepted and still except,

And be it further remembered that while the witness, W. G. Simpson, was testifying for himself and after he had testified that he had forwarded the \$2425 realized from the certificate of deposit by a check on the Southern National Bank of Louisville, the following happened, to-wit:

Q. Did you take this check from a check stub book?

A. Yes, sir. I filled out the stub first and then filled the check and detached the check.

Q. The entries were made at the same time were they?

A. Yes, sir.

Mr. Hawley, for the defendant: I now offer the check stub.

The Court: What do you offer it for?

Mr. Hawley: For the purpose of showing the good faith of the parties and the record of the whole transaction.

The Court: What does it tend to prove? I don't see how it bears on the question of good or bad faith.

Mr. Hawley: It shows that the check was drawn in the regular course of business. All those things

when done in that way go to the bona fide of the party.

The Court: The objection is sustained, to which action of the court, the defendants and each of them, then and there, in open court, duly and seasonably excepted and still except.

The above and foregoing constitutes the agreed bill of exceptions in the said cause and the United States by their District Attorney and the defendants by their respective attorneys, here now tender and same and ask that the same be examined, allowed and approved and made a part of the record herein, which is hereby accordingly in all things done, and the same and the foregoing is and shall be and is hereby declared to be the bill of exceptions in the foregoing styled and numbered cause.

Dated this, the 3rd day of March, A. D. 1915.

FRANK S. DIETRICH,

U. States District Judge, Presiding.

Endorsed: Filed Mar. 4, 1915. A. L. Richardson,  
Clerk. By Pearl E. Zanger, Deputy.

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### ASSIGNMENTS OF ERROR.

*In the District Court of the United States in and for  
the District of Idaho, Southern Division.*

UNITED STATES,

vs.

S. D. SIMPSON and W. G. SIMPSON.

No. 563.

*Come now* the defendants in the above entitled and

numbered cause and file the following as their assignments of error committed upon the trial of said cause and on account of which they, and each of them pray a reversal of the judgment therein, to-wit:

I.

The court erred in overruling the defendants' plea of jeopardy and former acquittal.

II.

The court erred in overruling the defendants' demurrers and motion to quash the indictment herein.

III.

The court erred in refusing to permit the defendants to prove by themselves and the board of directors of the American National Bank of Caldwell, that the issuance of the certificate of deposit in question was ratified by the board of directors as soon as they knew it had been issued and arranged for its payment by the discounting of Director Walters' note.

IV.

The court erred in refusing to permit the defendants to show by the defendant, S. D. Simpson, that he, the said defendant, S. D. Simpson, executed a warranty deed to his home, which was of greater market value than the certificate in question, which property, after the retirement of the Walters note by the complete payment thereof, by the defendant, W. G. Simpson, was retained by the bank and has never been returned to the defendant, S. D. Simpson, such testimony bearing directly upon the question of intent and being admissible after the Government had

been permitted to prove the entire transaction from March to September 27th, inclusive.

## V.

The court erred in that portion of his general charge to the jury wherein he instructed the jury that the phrase and words, "issued and put forth," as used in the bill of indictment, were fully satisfied by the placing of the blank certificate of deposit in question in the hands of the defendant, W. G. Simpson by the defendant S. D. Simpson, in the State of Idaho, even though such blank certificate did not, in fact, contain either date, name of payee, amount, or maturity, and even though such certificate did not, in fact, pass out of the hands of W. G. Simpson until a much later date and in a different state, to-wit, the State of Mississippi, where the date and name of payee and amount and maturity were put therein by the defendant, W. G. Simpson without the knowledge of the defendant, S. D. Simpson, and thereupon negotiated to an innocent holder in the State of Kentucky, because such instruction permitted the jury to convict these defendants for an offense committed beyond the jurisdiction of this court. This matter was called to the attention of the court by special instructions.

## VI.

The court erred in instructing the jury that they might convict the defendants, either or both of them, if they believed beyond a reasonable doubt, that the defendants or either of them had without the consent



of the board of directors, etc., issued the certificate in question with the intent to injure or defraud, because the indictment charged such intent to be in the conjunctive, to-wit, that such issuing and putting forth, etc., was done with the intent to injure and defraud.

## VII.

The court erred in charging the jury that the intent required by the statute and charged in the indictment could be presumed and the jury would be authorized in presuming it from the spending and use of the \$2425.00, which the defendant, W. G. Simpson, had realized upon his own note attached to which was a certificate of deposit which he had made from a blank given him by S. D. Simpson, because any intent that might have been in the minds of the defendants at the time they were using such \$2425.00 would not meet the measure of the law or the allegations of the indictment, unless such intent had also existed at the time the certificate in question had been issued or put forth, even though such subsequent use might, in reality, constitute another sort of an offense against the National Banking Law.

## VIII.

The court erred in overruling the defendants plea of jeopardy and former acquittal, because at the trial of this case at the September, 1914, term, a jury was empanelled, the defendants entered their plea, witnesses were sworn, testimony was taken and the arguments of counsel were had, all of which occupied more than three days of the court's time at the end

of which time, the defendants asked for an instructed verdict on the ground that the indictment did not allege that the certificate was put forth without the consent of the board of Directors, whereupon the court, of his own motion, discharged the jury over the protest and exception of the defendants, because even though such indictment may not have contained a clause sufficient to have made it correct for the unlawful issue of a certificate of deposit, the same did, in fact, charge an offense under the National Banking laws, to-wit, that of misapplication.

### IX.

The court erred in overruling the defendants' demurrer and motion to quash the bill of indictment, because said indictment is, in fact, duplicitous in that it attempts to charge more than one offense in the same count, to-wit, the commission of an act to injure the bank, the commission of an act to defraud the bank, the issuing of a certificate of deposit, and the putting forth of a certificate of deposit, four separate and distinct felonies.

### X.

The court erred in overruling the defendants' demurrer and motion to quash the indictment, because the said indictment states no offense against the laws of the United States, in that the facts therein attempted to be alleged, might be entirely innocent, because the statute does not require that one shall have on deposit with a bank that issues to him a certificate of deposit, the sum of money therein specified, nor any part of it.

## XI.

The court erred in refusing to permit the defendants' counsel to advise the jury in their argument that a conviction of the defendants would mean a penitentiary sentence, because the jury retired to consider over their verdict at 9:45 on Friday night, February 26th, and at 1 A. M. Saturday morning, February 27th, the jury retired into court and asked that the court re-read to them his instructions upon the question of intent and they thereupon retired to the jury room and stayed in continuous session all night long, without succor or sleep until about 7 A.M., when they were taken to breakfast, and then returned to the jury room and at shortly after 10 o'clock on the morning of Saturday, February 27th, they brought into court a verdict reading substantially as follows: "We, the jury, find the defendants guilty, but most earnestly ask the leniency of the court," which was a compromise verdict and the result of mental and physical exhaustion with the consequent weakened resolution and was found without the knowledge of the grave consequences of such a conclusion.

## XII.

The court erred in permitting the Government to offer testimony showing that the defendant, W. G. Simpson, had borrowed from the American National Bank in September, 1913, \$3500.00, because such testimony was highly prejudicial, threw no light upon the issue being tried, and certainly had nothing whatsoever to do with the intent that W. G. Simpson

had in March, 1913, when they issued, if they did issue, and put forth the certificate in question.

### XIII.

The court erred in overruling the defendants' motion in arrest of judgment, because such motion specifically attacked the validity of the indictment, the validity of the trial, showed that the defendants had been formerly in jeopardy and formerly acquitted, and that the court had erred in the conduct of the trial and in giving certain instructions to the jury, and in refusing to give certain special instructions of the defendants, all of which more particularly appears from said motion to arrest, which is referred to and made a part of this assignment.

### XIV.

The court erred in failing to grant these defendants a new trial for all of the reasons set forth in their amended motion for a new trial, which motion is made a part thereof and in the interest of brevity is not repeated.

### XV.

The court erred in refusing to permit the defendants to show all of the account of each of them in the individual ledger of the American National Bank, because the court had permitted the Government to introduce the ledger showing such accounts up to and including the 30th day of July, 1913, since such accounts would have shown the deposit by the defendants of various and sundry sums of money after said date, and the same were admissible upon the question

of good faith and intent and to rebut certain presumptions that were sought to be indulged in from the portions of such accounts introduced by the Government.

#### XVI.

The court erred in failing to give defendants' specially requested charge No. 1, or the substance thereof, which directed the jury that the venue was a matter of fact that the Government must prove beyond a reasonable doubt and that if the certificate of deposit described in the indictment was not issued and put forth within the jurisdiction of this court, but was issued and put forth in the State of Mississippi, or any where else, or if they had a reasonable doubt upon that question, they should acquit the defendants, because such requested charge is the law.

#### XVII.

The court erred in that portion of his charge to the jury wherein he instructed the jury in substance, that even though the defendant, S. D. Simpson, had issued hundreds of certificates of deposit without any authority of the directors, other than by implication, that such implied authority would not protect him in the issuance of the certificate in question for the reason that no money or its equivalent had been deposited with the Bank at the time of such issuance, because the statute does not require that the funds or their equivalent be deposited with the Bank at the time the certificate is issued, nor prior thereto,



nor simultaneous therewith, nor thereafter, and there was no reason why the said implied authority to issue could not have been acted on in good faith by the defendant, S. D. Simpson, with reference to the certificate in question, as with any other certificate, or at any rate, this issue should have been left, as a matter of fact, to the jury for its determination.

### XVIII.

The court erred in failing to give defendants' specially requested charge No. 2, or the substance thereof, and particularly that part thereof, which instructed the jury that the practice of the defendant, S. D. Simpson to issue certificates of deposit without first consulting the directors, of which practice the directors well knew, and the fact that the directors ratified the issuance of this certificate when first they saw it, would, in law, constitute such an authority to issue as the statute demanded and, therefore, the defendants should have been acquitted, because such instruction embraced the law with reference to the undisputed facts.

### XIX.

The court erred in failing to give defendants' requested instruction No. 3, wherein it was requested that the jury be told that if, as a matter of fact, they found that the certificate was not dated, nor made payable to anyone, nor filled in for any amount, nor bearing any maturity, when the same left the State of Idaho, then and in that event, they should acquit, for the reason that a commercial instrument is not

legally complete without date, amount, payee, and maturity stated therein and there can be no agency legally constituted that may supply such information if the principal is in ignorance as to such information and, further, because there was no charge of conspiracy made against these defendants, and further because the offense was not committed in Idaho.

## XX.

The court erred in failing to give to the jury specially requested charge No. 4, or the substance thereof, wherein the jury was instructed that they should find where the blank in fact became a certificate and if they found that it became a certificate in the State of Mississippi, and was there issued and put forth, they should acquit, because such stated the law.

## XXI.

The court erred in failing to give defendants' requested charge No. 15, or the substance thereof, which directed the jury to return a verdict of not guilty, because of the duplicitousness of the indictment in that it attempted to charge four different and distinct offenses by the conjunctive use of the words "injure and defraud", and the conjunctive use of the words "issued and put forth", because the statute makes each and all of such acts a distinct felony.

## XXII.

The court erred in failing to give defendants' requested charge No. 14, or the substance thereof,

wherein it was desired that the jury be told that the word "issue" and the words "put forth" as used in the indictment have a special legal meaning, which is, in substance, that the instrument declared upon in the indictment must have been complete at the time it went into the hands of the holder; in other words, it must have been dated, signed, must have carried an amount, a payee and a maturity, because otherwise it would not be a certificate of deposit and, therefore, was never issued or put forth within the meaning of the statute.

### XXIII.

The court erred in failing to give defendants' requested charge No. 5, wherein it was asked that the jury be told in substance that any intent that might have originated after the date of the issuing of the certificate with reference to the use of the \$2425.00, would not be the venal intent demanded under the statute and under the indictment before conviction, because the law demands that one's act be measured criminally by the intent existing at the time the act was committed.

### XXIV.

The court erred in failing to give the defendants' specially requested charge No. 6, wherein it was asked that the jury be instructed to acquit the defendants since the proof would not establish the allegations in the bill of indictment with reference to the issuing and putting forth of the certificate of deposit in question within the jurisdiction of the

court, nor with the intent to the law demanded, nor without the consent of the directors.

#### XXV.

The court erred in failing to give defendants' requested charge No. 7, which asked the jury by instruction that they should acquit unless they found that the defendants intended at the date of the issue of the instrument to injury and defraud the Bank, such being the allegation of the indictment.

#### XXVI.

The court erred in failing to give the defendants' requested charge No. 10, or the substance thereof, wherein it was asked that the jury be told that the statute does not require that money or its equivalent be deposited in a bank, or with a bank, before that bank shall issue a certificate of deposit, nor does the law require that one shall deposit money or its equivalent before a bank shall issue to him a certificate of deposit, because the statute denounces the issuance of a certificate of deposit with the intent to injure or defraud and without the consent of the board of directors and makes no other requirement with reference to the issuance of such instruments.

#### XXVII.

The court erred in refusing to give defendants' requested charge No. 11, or the substance thereof, wherein it was asked that the jury be told that the statute did not require that the consent of the board of directors should be secured concurrent with the issuance of a certificate of deposit, because under the

wording of the statute, such consent could be given before, at the time of, or after a certificate of deposit was issued and be entirely sufficient.

### XXVIII.

The court erred in failing and refusing to give defendants' requested charge No. 12, or the substance thereof, wherein it was sought to have the jury told that the law did not state when the consent of the board of directors should be secured for the issuance of a certificate of deposit, and therefore, if they found that the board of directors, or if they had a reasonable doubt with reference thereto, accepted such certificate on September 27, 1913, accepted it as the debt of the Bank, ratified its original issuing and putting forth and ordered the same paid, with full knowledge of all of the facts with relation thereto, then and in that event, such consent and ratification dated back to the time of its original issuance and constituted a consent within the law, because the statute does not say how such consent shall be given, nor when such consent shall be given, nor does the statute fix any different rule of law than the well-known rule of ratification, which dates back to the time of the doing of an unauthorized act and validities it the same as though the consent had been originally given at the very time the act was performed.

### XXIX.

The court erred in failing and refusing to give defendants' requested charge No. 4-A, or the substance thereof, wherein it was sought to have the



jury told that if the defendant, S. D. Simpson, delivered to the defendant, W. G. Simpson, in good faith and without any intent on his part to defraud the Bank, the certificate in question, and that W. G. Simpson disposed of said certificate with the intent of applying the proceeds thereof to the use of the Bank and did send the proceeds thereof in good faith to his co-defendant, S. D. Simpson, for that purpose then and in that event, they should acquit the defendant, W. G. Simpson, because such instruction stated the law.

### XXX.

The court erred in refusing to give defendants' requested charge No. 5-A, wherein it was asked that the jury be instructed that if they believed from the evidence that at the time of issuing the certificate the defendants issued the same without any intent to injure or defraud the Bank but intended to use the same as a means of obtaining money to meet the necessities of the Bank, and to turn over to the Bank, but that afterwards, the defendants, or either of them, changed their or his mind and decided to appropriate the proceeds, they could not be convicted because the statute requires that the evil intent exist at the time of the issuing or putting forth of the certificate.

### XXXI.

The court erred in instructing the jury to bring in a verdict against the defendants on their plea of former jeopardy and acquittal, because the Govern-

ment had neither traversed nor demurred thereto and further because such action was prejudicial to the defendants' rights, and further because such instruction was given the same jury that had been empaneled to try the issue of the guilt or innocence of the defendants upon the indictment then and there before the court.

Said defendants and each of them, respectfully submit the above and foregoing as their and his assignments of error committed by the court upon the trial of the above entitled and numbered cause and he and they respectfully pray a reversal of the judgment on account of such errors so assigned by him and them.

W. A. STONE,  
JAMES H. HAWLEY,  
C. H. LINGENFELTER,  
W. H. ATWELL,  
Attorneys for Defendants.

Endorsed: Filed March 6, 1915. A. L. Richardson, Clerk. By Pearl E. Zanger, Deputy.

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PETITION FOR WRIT OF ERROR.

*In the District Court of the United States in and for  
the District of Idaho, Southern Division.*

UNITED STATES,

vs.

S. D. SIMPSON and W. G. SIMPSON.

No. 563.

S. D. Simpson and W. G. Simpson, defendants in

the above entitled cause, feeling themselves aggrieved by the verdict of the jury rendered therein on the 27th day of February, A. D. 1915, and the judgment entered thereon on the.....day of March, 1915, come now by their respective attorneys, to-wit: S. D. Simpson by his attorneys, C. H. Lingenfelter and William H. Atwell, and W. G. Simpson by his attorneys, W. A. Stone and James H. Hawley, and petition the court for an order allowing the defendants and each of them jointly to prosecute a writ of error to the Honorable United States Circuit Court of Appeals for the Ninth Circuit, under and according to the laws of the United States in that behalf provided,

And your petitioners shall ever pray.

C. H. LINGENFELTER,

W. H. ATWELL,

Attorneys for Defendant, S. D. Simpson.

W. A. STONE,

JAMES H. HAWLEY,

Attorneys for Defendant, W. G. Simpson.

Endorsed: Filed March 6, 1915. A. L. Richardson, Clerk. By Pearl E. Zanger, Deputy.

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APPEAL FOR ORDER FIXING AMOUNT OF  
BAIL.

*In the District Court of the United States in and for  
the District of Idaho, Southern Division.*

UNITED STATES,

vs.

S. D. SIMPSON and W. G. SIMPSON.

No. 563.

*To the Honorable F. S. Dietrich, Judge Thereof:*

*Come Now*, S. D. Simpson and W. G. Simpson, defendants in the above entitled and numbered cause, by their respective attorneys as hereinafter signed, and respectfully show unto the Court that the writ of error has been granted herein to the United States Circuit Court of Appeals, for the Ninth Circuit, and that citation in error has been duly served and said defendants therefore move the Court to fix the amount of bail to be entered into by each of the defendants, pending the determination of said writ of error.

Respectfully submitted,

W. A. STONE,

JAMES H. HAWLEY,

C. H. LINGENFELTER,

W. H. ATWELL,

Attorneys for Defendants.

Endorsed: Filed March 6, 1915. A. L. Richardson, Clerk. By Pearl E. Zanger, Deputy.

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ORDER ALLOWING WRIT OF ERROR.

*In the District Court of the United States in and for  
the District of Idaho, Southern Division.*

UNITED STATES,

vs.

S. D. SIMPSON and W. G. SIMPSON.

No. 563.

At a stated term, to-wit, the February term, A. D. 1915, of the District Court of the United States of America, for the Southern Division of the District of Idaho, held at the court room in the City of Boise, on the 23rd day of February, A. D. 1915, and the working days succeeding, present the Honorable F. S. Dietrich, District Judge.

UNITED STATES OF AMERICA,

vs.

S. D. SIMPSON and W. G. SIMPSON.

No. 563.

Upon motion of C. H. Lingenfelter, William H. Atwell, W. A. Stone and James H. Hawley, Esquires, attorneys of record for the above mentioned defendants, and upon filing a petition for writ of error and assignments of error, and bill of exceptions, it is ordered that a writ of error be and the same is hereby allowed, to have reviewed in the United States Circuit Court of Appeals for the Ninth Circuit, and judgment heretofore entered herein, and that the amount of bond on said writ of error be and the same is hereby fixed at the sum of \$5000.00 for each of said defendants.

FRANK S. DIETRICH,  
Judge Presiding.

Endorsed: Filed March 6, 1915. A. L. Richardson, Clerk. By Pearl E. Zanger, Deputy.



BOND OF W. G. SIMPSON.

UNITED STATES OF AMERICA,

vs.

S. D. SIMPSON an W. G. SIMPSON.

No. 563.

*In the United States District Court of the Southern  
Division of the District of Idaho.*

We, W. G. Simpson and the other subscribers hereto, jointly and severally, acknowledge ourselves indebted to the United States of America, in the sum of Five Thousand (\$5000.00) Dollars, lawful money of the United States of America, to be levied on our, and each of our, goods, chattels, lands and tenements, upon this condition:

*Whereas*, the said W. G. Simpson has sued out a writ of error from the judgment of the United States District Court, for the Southern Division of the District of Idaho, in cause No. 563, in said court, wherein the United States of America are plaintiffs, and the said W. G. Simpson and the said S. D. Simpson are defendants, for a review of the judgment in the United States Circuit Court of Appeals for the Ninth Circuit:

Now, if the said W. G. Simpson shall appear and surrender himself in the District Court of the United States for the Southern Division of the District of Idaho, on and after the filing in said District Court of the mandate of the said United States Circuit Court of Appeals for the Ninth Circuit, and from time to time thereafter as he may be required to

answer any further proceedings and abide by and perform any judgment or order which may be had or rendered therein in this case, and shall abide by and perform any judgment or order which may be rendered in said United States Circuit Court of Appeals for the Ninth Circuit and not depart from said District Court without leave thereof, then this obligation shall be void; otherwise, remain in full force and virtue.

*Witness* our hands and seals on this the 6th day of March A. D. 1915.

Charles O. Nelson for \$500.00,

Howard E. Stein for \$500.00,

H. J. McGirr, \$500.00,

R. L. McClelland, \$500.00,

J. W. Robinson, \$500.00,

N. W. Hawn, \$500.00,

W. G. Simpson,

Charles Ceaser, \$500.00,

W. H. Puckett, \$500.00,

Chas. W. Mack, \$500.00,

J. S. Springer, \$500.00.

Taken and approved this, the . . . . . day of March, A. D. 1915, before me, . . . . ., District Judge.

Taken and approved this, the . . . . . day of March, A. D. 1915.

.....  
Clerk United States District for the  
District of Idaho.

State of Idaho,  
County of Ada,—ss.

Charles O. Nelson, Howard E. Stein, H. J. McGirr, R. L. McClelland, J. W. Robinson, N. W. Hawn, Charles Ceaser, W. H. Puckett and J. S. Springer, whose names are subscribed as sureties to the foregoing undertaking, being severally duly sworn, each for himself, says, that he is a resident and freeholder, within this state and is worth the sum in said undertaking specified as the penalty thereof, over and above all his just debts and liabilities, exclusive of property exempt from execution.

H. J. MCGIRR,  
R. L. MCCLELLAND,  
HOWARD E. STEIN,  
CHARLES CEASER,  
W. H. PUCKETT,  
CHARLES O. NELSON,  
J. W. ROBINSON,  
N. W. HAWN,  
J. S. SPRINGER.

Subscribed and sworn to before me this the 6th day of March, 1915.

CHAS. W. MACK,  
Notary Public.

State of Idaho,  
County of Ada,—ss.

Chas. W. Mack, whose name is subscribed as a surety to the foregoing undertaking, being duly sworn says, that he is a resident and free-holder within this state and is worth the sum in said under-

taking specified as the penalty thereof, over and above all his just debts and liabilities, exclusive of property exempt from execution.

CHAS. W. MACK.

Subscribed and sworn to before me this 6th day of March, 1915.

GEO. C. WALKER,  
Notary Public.

Approved: Dietrich, Judge. March 6, 1915.

Endorsed: Filed March 6, 1915. A. L. Richardson, Clerk By Pearl E. Zanger, Deputy.

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BOND OF S. D. SIMPSON.

UNITED STATES OF AMERICA,

vs.

S. D. SIMPSON and W. G. SIMPSON.

No. 563.

*In the United States District Court of the Southern  
Division of the District Court of Idaho.*

We, S. D. Simpson, as principal, and C. F. Spencer and A. W. Dobson, as sureties, the subscribers hereto, jointly and severally acknowledge ourselves indebted to the United States of America, in the sum of Five Thousand Dollars (\$5000.00), lawful money of the United States of America, to be levied on our, and each of our, goods, chattels, lands and tenements, upon this condition:

*Whereas*, the said S. D. Simpson has sued out a writ of error from the judgment of the United States

District Court for the Southern Division of the District of Idaho, in cause No. 563, in said court, wherein, the United States of America is plaintiff, and the said S. D. Simpson together with W. G. Simpson is defendant, for a review of the judgment in the United States Circuit Court of Appeals for the Ninth Circuit, which said judgment, rendered March 6, 1915, imposes upon said Simpson a punishment of five years imprisonment for a violation of the national banking laws;

Now, if the said S. D. Simpson shall appear and surrender himself in the District Court of the United States for the Southern Division of the District of Idaho, on and after the filing in said District Court of the mandate of the said United States Circuit Court of Appeals for the Ninth Circuit, and from time to time thereafter, as he may be required to answer any further proceedings and abide by and perform any judgment or order which may be had or rendered therein in this case, and shall abide by and perform any judgment or order which may be rendered in said United States Circuit Court of Appeals for the Ninth Circuit and not depart from said District Court without leave thereof, then this obligation shall be void; otherwise remain in full force and virtue.

*Witness* our hands and seals on this the 14th day of April, A. D. 1915.

S. D. SIMPSON, (Seal.)

A. W. DOBSON, (Seal.)

C. F. SPENCER. (Seal.)



Personally appeared before me, the undersigned United States Commissioner for the Southern District of Texas, the above named S. D. Simpson, principal in foregoing bond, who acknowledged to me that he signed, sealed and delivered the foregoing instrument, for the purposes and considerations therein expressed.

Done at Houston, Texas, this 14th day of April, 1915.

A. L. JACKSON,  
U. S. Commissioner, Southern District of Texas,  
at Houston, Texas.

Personally appeared before me, the undersigned United States Commissioner for the Northern District of Texas, the above named A. W. Dobson, sureties on the foregoing bond, and acknowledged to me that he signed, sealed and delivered the foregoing instrument, for the purposes and considerations therein expressed.

Done at Fort Worth, Texas, this 20th day of April, 1915.

GEO. W. MITCHELL,  
U. S. Commissioner, Northern District of Texas,  
at Ft. Worth, Texas.

Personally appeared before me, the undersigned County Clerk in and for Montague County, Texas, and above named C. F. Spencer, surety on the foregoing bond, and acknowledged to me that he signed, sealed and delivered the foregoing instrument for the purposes and considerations therein expressed.

Done at Montague, Texas, this 23rd day of April, 1915.

I. L. CHAUDLER,  
County Clerk, Montague County, Texas.

United States of America,  
Northern District of Texas.

I, Geo. W. Mitchell, United States Commissioner for the Northern District of Texas, do hereby certify that in my opinion C. F. Spencer and A. W. Dobson, sureties upon the annexed bond of S. D. Simpson, in the sum of \$5,000.00, in the case of the United States of America vs. S. D. Simpson, pending in the United States District Court for the Southern Division of the District of Idaho, No. 563, are good for the amount of the said bond, and if said bond were presented to me for approval, I would approve the same.

Given under my hand and seal of office this 26th day of April, 1915.

GEO. W. MITCHELL,  
United States Commissioner, Northern District of  
Texas.

United States of America,  
Northern District of Texas,—ss.

C. F. Spencer, a surety on the annexed recognizance, being duly sworn, deposes and says that he resides at Montague, in the County of Montague, Texas, in said District, that he is a free-holder in the County of Montague, Texas, that he is worth the sum of Four Thousand Dollars, over and above all his just debts and liabilities, in property subject to

execution and sale, and that his property consists of stone business building and lot at S. W. corner public square; and stone business building and lot at N. W. Corner square in Montague, Texas, Vendor's lien notes on Montague County farm property, and \$1,000 in cattle, horses and mules, in Stevens Co., Okla.

(Affiant's signature) C. F. SPENCER.

Sworn to and subscribed before me this 4th day of March, A. D. 1915.

GEO. W. MITCHELL,  
United States Commissioner for said Northern

District of Texas.  
United States of America,  
Northern District of Texas,—ss.

A. W. Dobson, a surety on the annexed recognizance, being duly sworn, deposes and says that he resides at Fort Worth, in the County of Tarrant, Texas, in said District, that he is a freeholder in the County of Tarrant, Texas, that he is worth the sum of Ten Thousand Dollars, over and above all his just debts and liabilities, in property subject to execution and sale, and that his property consists of 1,000 acres of land in Margaret Carrol survey, Lavacca County, Texas.

(Affiant's signature) A. W. DOBSON,

Sworn to and subscribed before me, this 4th day of March, A. D. 1915.

GEO. W. MITCHELL,  
United States Commissioner for said Northern  
District of Texas.

Approved: Dietrich, Judge. April 30, 1915.

Endorsed: Filed April 30, 1915. A. L. Richardson, Clerk. By Pearl E. Zanger, Deputy.

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PRAECIPE FOR RECORD.

*In the District Court of the United States in and for  
the District of Idaho, Southern Division.*

UNITED STATES,

vs.

S. D. SIMPSON and W. G. SIMPSON.

No. 563.

*To the Clerk of the United States District Court for  
said Division and District:*

You are hereby requested to make the record in the above styled and numbered cause to consist of the following parts of said record, for transmission to the United States Circuit Court of Appeals for the Ninth Circuit, to-wit:

1. Indictment.
2. Plea of former jeopardy and Government Replication.
3. Demurrers and motion to quash indictment.
4. Hearing and verdict.
5. Motion for new trial.
6. Sentence.
7. Bill of exceptions.
8. Assignments of errors.
9. Petition for writ of error.
10. Application for order fixing amount of bail.

11. Order allowing writ of error.
12. Bail bonds.
13. Writ of error.
14. Citation.
15. Special charge of defendants.

Respectfully,

W. A. STONE,  
JAMES H. HAWLEY,  
C. H. LINGENFELTER,  
W. H. ATWELL,  
Attorneys for Defendants.

Endorsed: Filed March 6, 1915. A. L. Richardson, Clerk. By Pearl E. Zanger, Deputy.

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*In the District Court of the United States in and for  
the District of Idaho, Southern Division.*

UNITED STATES,

vs.

S. D. SIMPSON and W. G. SIMPSON.

No. 563.

*The President of the United States of America, to  
the Judge of the District Court of the United  
States for the Southern Division of the District  
of Idaho, Greeting:*

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court, before you, between the United States of America, plaintiffs, and S. D. Simpson and W. G. Simpson, defendants, a manifest error



hath happened to the great damage of the said S. D. Simpson and W. G. Simpson as is said and appears by the complaint. We, being willing that such error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Justices of the United States Circuit Court of Appeals for the Ninth Circuit, at the court rooms of said Court in the Federal Building, in the City of San Francisco, together with this writ, so that you have the same at the said place, before the Justices aforesaid, on the 5th day of April next, that the record and proceedings aforesaid being inspected, that said Justices of the said Circuit Court of Appeals may cause further to be done therein, to correct that error, what of right and according to the law and custom of the United States ought to be done.

*Witness* the Honorable Edward D. White, Chief Justice of the Supreme Court of the United States, this 6th day of March, in the year of our Lord, One Thousand Nine Hundred and Fifteen, and of the independence of the United States, the One Hundred and Thirty-ninth.

A. L. RICHARDSON,

Clerk of the District Court of the United States  
for the Southern Division of the District of  
Idaho.

By Pearl E. Zanger, Deputy Clerk.

The foregoing writ is hereby allowed.

FRANK S. DIETRICH,  
Judge of the United States District Court, Idaho  
District.

Endorsed: Filed March 6, 1915. A. L. Richardson, Clerk. By Pearl E. Zanger, Deputy.

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*In the District Court of the United States in and for  
the District of Idaho, Southern Division.*

UNITED STATES,

vs.

S. D. SIMPSON and W. G. SIMPSON.

No. 563.

*United States of America to Honorable J. L. Mc-  
Clear, their District Attorney for the District of  
Idaho, Greeting:*

You are hereby cited and admonished to be and appear at a term of the United States Circuit Court of Appeals for the Ninth Circuit to be holden in the City of San Francisco on the 5th day of April, 1915, pursuant to a writ of error, filed in the clerk's office of the District Court of the United States for the Southern Division of the District of Idaho, wherein S. D. Simpson and W. G. Simpson are plaintiffs in error and the United States of America are defendants in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

*Witness* my hand and official seal at Boise, Idaho,  
on this, the 6th day of March, A. D. 1915.

FRANK S. DIETRICH,

[ Seal ]

Judge.

A. L. RICHARDSON,

Clerk of the United States District Court for the  
District of Idaho.

By Pearl E. Zanger, Deputy Clerk.

Service is hereby accepted.

J. L. McCLEAR,

United States District Attorney for the District  
of Idaho.

Endorsed: Filed March 6, 1915. A. L. Richardson,  
Clerk. By Pearl E. Zanger, Deputy.

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### RETURN TO WRIT OF ERROR.

And thereupon it is ordered by the Court that the foregoing transcript of the record and proceedings in the cause aforesaid, together with all things thereunto relating, be transmitted to the said United States Circuit Court of Appeals for the Ninth Circuit, and the same is transmitted accordingly.

Attest:

[ Seal ]

A. L. RICHARDSON,

Clerk.

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### CLERK'S CERTIFICATE.

*In the District Court of the United States for the  
District of Idaho, Southern Division.*

THE UNITED STATES,

Plaintiff,

vs.

W. G. SIMPSON and S. D. SIMPSON,

Defendants.

*Clerk's Certificate.*

I, A. L. Richardson, Clerk of the District Court of the United States for the District of Idaho, do hereby certify that the above and foregoing transcript of pages numbered from 1 to 178, inclusive, contain true and correct copies of the Indictment, Plea of former jeopardy, Government's Replication to plea of former jeopardy. Demurrers, Motion to quash indictment, Hearing, Verdict, Motion for new trial, Judgment, Bill of Exceptions, Assignments of Error, Petition for Writ of Error, Application for order fixing amount of bail, Order allowing Writ of Error, Bail bonds, Writ of Error, Citation, Special Charges of defendants, Praecept for Record, Return to Writ of Error and Clerk's Certificate, which together constitute the transcript of the record and return to the annexed Writ of Error.

I further certify that the cost of the record herein amounts to the sum of \$300.00, and that the same has been paid by the appellant.

*Witness* my hand and the seal of said court this 6th day of May, 1915.

[ Seal ]

A. L. RICHARDSON,

Clerk.

**[Defendant's Motion in Arrest of Judgment.]**

*In the District Court of the United States in and  
for the District of Idaho, Southern Division.*

Case No. 563.

UNITED STATES

vs.

S. D. SIMPSON and W. G. SIMPSON.

To the Honorable F. S. DIETRICH, Judge thereof:

COME NOW the defendants in the above-styled and numbered cause and file this their motion in arrest of judgment, and pray that no sentence be entered against them, or either of them, upon the verdict of the jury rendered herein in the above-styled and numbered cause on Saturday, February 27th, A. D. 1915, on the following grounds, to wit:

I.

Because the indictment states no offense under the laws of the United States of America.

II.

Because the indictment attempts to state in the same count four separate and distinct offenses, in that it charges that these defendants performed certain acts with the intent to injure the bank therein mentioned and engaged in certain acts with the intent to defraud the bank therein mentioned, and issued a certain certificate therein mentioned and put forth a certain certificate therein mentioned, each and all of which are distinctive felonies under section 5209 of the Revised Statutes of the United States, and the said count and indictment is therefore duplicitous.



## III.

Because the Court erred in overruling these defendants' plea of jeopardy heretofore filed herein.

## IV.

The Court erred in the trial of the above-styled and numbered cause wherein he refused to permit these defendants to offer testimony by the various directors of the American National Bank of Caldwell, and to give the testimony of themselves to the effect that on September 27th, 1913, when the certificate of deposit in question reached the American National Bank at Caldwell for the first time, that thereupon its issuance was ratified by the board of directors of the said bank and ordered paid.

## V.

The Court erred during the trial of the above-styled and numbered cause in refusing to permit these defendants to testify and to offer testimony to the effect that the fund which paid the certificate of deposit in question originated from a note placed in the American National Bank by Director Walters, which said note passed into the loans and discounts and which said loan in fact paid the said certificate, and that the defendant, S. D. Simpson, deeded his home for the securing of said note and that a few days thereafter the defendant, W. G. Simpson, gave his check in settlement of the Walters note, but that the bank continued to and did, in fact, keep the property deeded to it by S. D. Simpson.

## VI.

The Court erred in the submission of this cause to the jury in that portion of his charge relating to

the question of venue, in that the jury were instructed as a matter of law that the handing of the blank certificate in question, signed only by the defendant, S. D. Simpson, to the defendant, W. G. Simpson, in the Idaho District, would, as a matter of fact, by the issuance and putting forth of such certificate in the Idaho District regardless of where and when the said certificate was in fact dated and filled in as to payee, amount and maturity, and regardless of and in the face of the testimony that the certificate was, in fact, put forth, issued and transferred within the meaning of the law, in the State of Mississippi to a holder in the State of Kentucky, that there was no allegation made against these defendants in the bill of indictment of having conspired within this District which would admit against the defendant, S. D. Simpson, the subsequent acts of his codefendant, W. G. Simpson, the question of venue being, under the law, vital to jurisdiction and to conviction.

## VII.

The Court erred in submitting this cause to the jury in that portion of his charge wherein he instructed the jury that the continuous practice of the defendant, S. D. Simpson, of issuing certificates of deposit without receiving the authority of the board of directors otherwise than by implication, would not apply to, nor could it be considered by the jury the certificate in question for the reason that the same was issued and put forth without having the money or its equivalent first deposited with the bank. Because there is no provision in the law requiring

the deposit of money before a certificate shall be issued, nor even after a certificate shall be issued, and the issuing of a certificate without the depositing of the money or its equivalent is not denounced in the statute as an offense.

### VIII.

Because the Court erred in that portion of his charge wherein he instructed the jury that they might convict these defendants if they found that they did the acts charged against them with the intent either to injure or defraud the bank, because the indictment alleged that they had committed the acts therein complained of with the intent to injure and defraud and having charged in the conjunctive, the Government was bounden to prove beyond a reasonable doubt an intent both to injure and defraud and such allegation would not be satisfied by proof of an intent to injure or defraud.

### IX.

Because the Court erred in refusing to give to the jury the charges requested by these defendants and each of them, or the substance thereof, as more particularly appears from said charges on file herein and from the court's general charge.

WHEREFORE, defendants pray as heretofore stated.

W. A. STONE and  
JAMES H. HAWLEY,  
Attorneys for Defendant W. G. Simpson.  
C. H. LINGENFELTER and  
W. H. ATWELL,  
Attorneys for Defendant S. D. Simpson.

UNITED STATES OF AMERICA.

District of Idaho,—ss.

I, A. L. Richardson, Clerk of the United States District Court for the District of Idaho, do hereby certify that the foregoing copy of Defendants' Motion in Arrest of Judgment, in cause No. 563, United States vs. S. D. Simpson and W. G. Simpson, has been by me compared with the original, and that it is a correct transcript therefrom and of the whole of such original, as the same appears of record and on file at my office and in my custody.

In testimony whereof, I have set my hand and affixed the seal of said Court in said District this 10th day of September, 1915.

[Seal]

A. L. RICHARDSON,  
Clerk.

By Pearl E. Zanger,  
Deputy.

[Ten Cent Internal Revenue Stamp. Canceled 9/10/15. A. L. R.]

[Endorsed]: No. 563. District Court of the United States, District of Idaho, Southern Division. Case No. 563. United States vs. S. D. Simpson et al. Defendants' Motion in Arrest of Judgment. Filed March 1, 1915. A. L. Richardson, Clerk. By Pearl E. Zanger, Deputy.

No. 2608. United States Circuit Court of Appeals for the Ninth Circuit. Filed Sep. 13, 1915. F. D. Monckton, Clerk.

